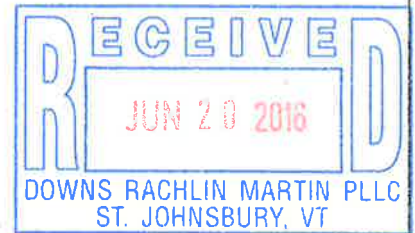


STATE OF VERMONT
PUBLIC SERVICE BOARD



Docket No. 8300

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)

Hearings at
Montpelier, Vermont
February 23, 2016

Order entered: 6/17/2016

PRESENT: James Volz, Chair
Margaret Cheney, Board Member
Sarah Hofmann, Board Member

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Clay Turnbull, *pro se*
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Christiane Howe, Chair, *pro se*
For the Town of Vernon Selectboard

I. INTRODUCTION

Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, “Entergy VY”), have requested that the Vermont Public Service Board (“Board”) authorize site preparation for, construction of, and storage of spent nuclear fuel (“SNF”) at an Independent Spent Fuel Storage Installation (“ISFSI”) at the Vermont Yankee Nuclear Power Station (the “VY Station”) pursuant to 30 V.S.A. § 248 and 10 V.S.A. § 6522. Entergy VY also requests that the Board permit it to commence site preparation for and construction of a 200-kilowatt (“kW”) diesel electric generator to provide a backup source of power (together, these changes are referred to as the “Project”). By today’s Order, we approve Entergy VY’s request, which will allow the construction of the ISFSI, the second at the VY Station,¹ and enable the transfer of all SNF to dry casks. Accordingly, we issue a Certificate of Public Good (“CPG”) for the Project, finding that it will promote the general good of the State.

In this proceeding, all parties agree that the VY Station’s SNF should be removed from the plant’s spent fuel pool and transferred to dry storage as expeditiously as possible. Such removal is necessary to allow for complete decommissioning of the VY Station, which cannot occur while fuel remains in the spent fuel pool. The only concerns raised by parties to this proceeding were whether Entergy VY had adequately considered alternatives to the construction of a second ISFSI, whether the location of the ISFSI might delay or otherwise affect the timing or

1. The Board previously approved the construction of an ISFSI at the VY Station capable of storing 36 dry casks. *Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a certificate of public good to construct a dry fuel storage facility*, Docket 7082, Order of 4/26/06.

costs associated with decommissioning of the VY Station, and whether the Project might have undue adverse effects upon aesthetics.

We have examined each of these issues (as well as the other statutory criteria) and conclude that Entergy VY has demonstrated that construction of the Project is in the general good of the State of Vermont and that the Project will not create any adverse effects on the environment, including aesthetics. The Project will be constructed at an existing industrial site, adjacent to an existing ISFSI, so the aesthetic impacts are minimal.

We also find that Entergy VY reasonably examined alternatives to the Project, and we decline to delay construction of the Project while Entergy VY evaluates other potential sites in Windham County as a possible storage location (as recommended by the New England Coalition ("NEC")). Finally, the evidence does not lead us to conclude that construction of the second ISFSI will delay the time of decommissioning or increase the costs associated therewith.

II. PROCEDURAL HISTORY

On June 30, 2014, Entergy VY filed its petition and prefiled supporting testimony with the Board. On July 15, 2014, the Board initiated this proceeding to consider the company's petition.

On July 25, 2014, Entergy VY requested that the Board defer the scheduled prehearing conference as well as further proceedings in this docket until the fall because it needed additional time to complete the necessary soil analyses and associated design calculations for the second ISFSI storage pad. Entergy VY also indicated that it was in the process of preparing a site-specific decommissioning cost estimate and updated irradiated fuel management plan that would address, among other decommissioning-related activities, the funding for spent fuel management. Entergy VY anticipated that the cost estimate and the plan would be complete by the end of 2014.

The Board convened a prehearing conference on October 29, 2014, at which time Entergy VY recommended that the Board not establish a schedule due to the ongoing engineering studies that could alter the design of the Project. Rather, Entergy VY proposed to consult with the other

parties and the Clerk of the Board to identify possible dates for a status conference in late winter or early spring of 2015.

On April 3, 2015, after consulting with the Department of Public Service (“Department”) and the Agency of Natural Resources (“ANR”) and with the New England Coalition (“NEC”) and Windham Regional Commission (“WRC”), whose intervention-related filings were pending with the Board, Entergy VY submitted a letter requesting the Board to schedule a status conference in late April or at the Board’s earliest convenience.

On April 29, 2015, the Board held a status conference. Entergy VY, with support from other parties, proposed a schedule for the docket, which the Board adopted in its scheduling order dated May 6, 2015.

On June 4, 2015, the Board held a site visit at the VY Station and a public hearing. Five members of the public spoke at the hearing.

On July 7, 2015, the Board granted permissive intervention to the Town of Vernon and WRC and conditionally to NEC.

On February 18, 2016, Entergy VY filed a stipulation between Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. and ANR (the “Stipulation”), addressing how Entergy VY would manage any non-radiological soil contamination and building-demolition waste associated with the Project as well as certain other issues.

The Board held a duly noticed technical hearing on February 23, 2016.

Subsequent to the hearing, NEC filed several motions seeking the admission of additional evidence or further investigation. The Board issued an Order on June 2, 2016, denying these motions.

III. POSITIONS OF THE PARTIES

Entergy VY, the petitioner in this proceeding, asks the Board to approve the construction of a second ISFSI and related improvements and the installation of a 200-kW diesel generator at the VY Station. Entergy VY argues that construction of the second ISFSI in the location and on the timeline Entergy VY proposes is necessary to move SNF to dry storage by the end of 2020 and to facilitate eventual decommissioning of the VY Station.

Entergy VY also argues that the site of the proposed second ISFSI pad is reasonable and will not result in material delay of or increased costs for decommissioning and that other location sites have distinct disadvantages compared to the proposed Project location. Entergy VY further argues that requiring it to conduct further analyses of underground storage or alternative locations, as NEC recommends, would yield no significant benefits and would result in significant delay and increased costs – particularly for an off-site location given the Nuclear Regulatory Commission (“NRC”) regulations and other licensing requirements that would have to be met for such an off-site location for SNF storage. Entergy VY argues that the evidence it presented demonstrates that the Project, located as it proposes, meets each of the siting criteria established by 30 V.S.A. § 248(b) and the additional criteria for SNF storage established by 10 V.S.A. § 6522.²

Vermont Department of Public Service

The Department supports the issuance of a CPG for the Project. The Department argues that Entergy VY has provided sufficient evidence to allow the Board to make affirmative findings on each of the statutory criteria. The Department states that it supports the transfer of all SNF to dry cask storage by the end of 2020 as a first step to restoring the VY Station site to unrestricted use in the future. The Department disagrees, however, that it is appropriate for Entergy VY to use funds from the VY Station’s Nuclear Decommissioning Trust to pay for SNF management activities unrelated to the Project and is pursuing a claim to that effect before the NRC. Nonetheless, the Department contends that Entergy VY has demonstrated that Entergy VY has adequate financial resources for the Project.

2. Entergy VY notes its continued objection to the State of Vermont’s assertion of jurisdiction over matters for which the federal government and the NRC have exclusive jurisdiction, including such exercise of its jurisdiction under Section 248 of Title 30, and Chapter 157 of Title 10, Vermont Statutes Annotated. In its petition, Entergy VY reserved its right to challenge on federal preemption grounds any state directive that would delay, prohibit, or interfere with installation of the Project.

Vermont Agency of Natural Resources

ANR initially offered evidence asking the Board to impose certain conditions in any CPG issued for the Project regulating how Entergy VY should manage Project waste materials and soils excavated for the Project's construction. ANR and Entergy VY executed the Stipulation, which addressed these issues and was admitted into the record. As a result of the Stipulation, ANR now agrees that the Project satisfies the Section 248(b)(5) criteria that are within its jurisdiction and will promote the general good of the State.

New England Coalition

NEC contends that from a planning perspective, the Board cannot make any assumptions as to how long any SNF stored at the VY Station site will remain there. As a result, NEC maintains that the Board's analysis of Section 248(b)(1) (orderly development) and (b)(5) (aesthetics) should assume potentially indefinite storage.

As to specific issues, NEC argues that there is insufficient evidence for the Board to make affirmative findings under the two criteria. NEC contends that the testimony of Entergy VY witnesses George Thomas and Harry Dodson is tainted and unreliable "because of bias, error, self-contradictions and gross omission." NEC faults Mr. Dodson as failing to provide any positive basis for findings, citing to what NEC perceives to be inconsistencies. As a result, NEC argues that Entergy VY has not demonstrated that the second ISFSI will not have an undue adverse aesthetic impact.

For Mr. Thomas, NEC argues that he has failed to provide sufficient demonstration that Entergy VY reasonably considered alternative locations, evaluated underground storage of the SNF, or consulted with informed stakeholders. NEC therefore recommends that the Board require Entergy VY to undertake a complete evaluation of alternatives (both on the VY site and off-site) with input from stakeholders.

Windham Regional Commission

WRC states that it neither supports nor opposes Entergy VY's petition, but rather raises issues of regional importance. In this vein, WRC focuses on Section 248(b)(1) and whether the

second ISFSI will interfere with the orderly development of the Project. WRC states that it recognizes the need for the second ISFSI and supports moving the SNF from the spent fuel pool to dry cask storage as soon as possible. However, WRC expresses concern that, based upon statements from Entergy VY in this proceeding and in Entergy VY's Site Assessment Study, the location of the second ISFSI could inhibit demolition or restrict the methodologies available for demolishing the reactor building and other nearby structures. As a result, WRC recommends that Entergy VY should be held responsible for any increased costs of decommissioning arising from the location of the second ISFSI, that these costs not be recoverable from the Decommissioning Trust Fund, and that Entergy VY be required to show that the second ISFSI will not inhibit redevelopment of the site.

IV. PUBLIC COMMENTS

In addition to hearing from the formal parties, the Board conducted a public hearing in Vernon on June 4, 2015. The Board appreciates receiving comments from members of the public who took the time to share their views and perceptions. Their comments have helped to guide the Board's attention to specific issues that otherwise might not have been raised in the case. It is important to note, however, that Vermont law requires the Board to base its decision on the content of the formal evidentiary record as developed by the parties through the contested case process. Public comments cannot be treated as such formal evidence because they are not delivered under oath or subject to cross-examination pursuant to applicable rules of evidence and procedure. Nevertheless, public comments play an important role in helping to ensure a thorough exploration of the factors that the Board should consider in crafting the evidentiary record. These comments also facilitate a better understanding for the Board of how its decision is likely to affect citizens across the state.

Some of the public comments the Board heard addressed the following issues:

- The proposed ISFSI storage pad should be sited in a different location that is less vulnerable to natural and manmade disasters. Tr. 06/04/15 at 5 (Levin).
- The Board should consider a berm around the ISFSI. Tr. 06/04/15 at 5 (Levin), 8 (Williams).

- SNF should be removed from the spent fuel pool as quickly as possible. Tr. 06/04/15 at 7 (Williams), 11 (Sachs).
- Liquefaction and hydrology experts should be hired to review the Project prior to issuance of a CPG. Tr. 06/04/15 at 10-11 (Sachs).
- Board should give consideration to the fact that the SNF could remain at the site for an indeterminate amount of time. Tr. 06/04/15 at 13 (Sullivan Sachs).
- The Board should add conditions to a CPG, including: restrictions on SNF placement into casks to times when children are not at school nearby; site cleanup before construction of the pad; and security and monitoring requirements. Tr. 06/04/15 at 7-9 (Williams), 15-16 (Picard).

V. LEGAL FRAMEWORK

In its petition, Entergy VY seeks a CPG under 30 V.S.A. § 248 for the construction of a second ISFSI to store SNF at the VY Station site. Two provisions of State law require Entergy VY to obtain such a CPG. First, Section 248 of Title 30 prohibits site preparation for or construction of an electric generating station within the state unless the Board issues a certificate authorizing the construction. Second, Section 6522 of Title 10 requires that neither the owners of the VY Station nor their successors or assigns may commence construction or establishment of any new storage facility for SNF before receiving a CPG from the Board.

Entergy VY has asserted that the federal government and Nuclear Regulatory Commission have exclusive jurisdiction over aspects of the Project and objects to the Board exercising jurisdiction over these areas. As we have found before, the Board recognizes that federal law places limitations on the State's jurisdiction.³ As we found in Docket 7862,

The federal government has exclusive jurisdiction over radiological safety concerns (except for enumerated areas expressly ceded to the states, such as the authority to regulate the air emission of radiation). The United States Supreme Court has held that this federal jurisdiction over radiological safety occupies the

3. *Amended Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for amendment of their Certificate of Public Good and other approvals required under 30 V.S.A. § 231(a)*, Docket 7862, Order of 3/28/14 at 20.

entire field.⁴ The NRC "was given exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession and use of nuclear materials" and "[u]pon these subjects no role was left for the states." Finally, under traditional preemption principles, the Board's jurisdiction over nuclear power plants is limited to the extent that it directly conflicts with federal jurisdiction exercised by the NRC or would frustrate the purposes of the federal regulation.

However, we also have recognized that Supreme Court precedent explicitly states that the regulation of nuclear facilities is one of dual jurisdiction, with states retaining significant authority. The Supreme Court has observed that Congress:

intended that the federal government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant, but that States retain their traditional responsibilities in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns.⁵

These other areas of state authority encompass traditional state concerns such as land use.⁶ The *PG&E* decision notes that federal law explicitly preserves state authority to regulate these activities for other purposes:

Nothing in this section shall be construed to affect the authority of any state or local agency to regulate activities for purposes other than protection against radiation hazards.⁷

The Supreme Court's ruling and federal law thus reserve substantial jurisdiction to the State of Vermont over nuclear facilities and the dry fuel storage facility, so long as we are not regulating radiological safety and are acting within the areas of traditional state concern. These areas encompass the criteria in 30 V.S.A. § 248 and 10 V.S.A. § 6522(b). State authority remains unless in direct conflict with federal requirements.

4. *Id.*

5. *Id.* at 205.

6. *Id.* at 212.

7. 42 U.S.C. § 2021(k).

VI. FINDINGS AND DISCUSSION

A. Description of the Project

1. The Board approved the existing ISFSI storage pad at the VY Station, with space for 40 casks, in Docket 7082 on April 26, 2006. Four of the spaces accessible from the apron of the ISFSI must be kept open to allow for the movement of casks on the ISFSI storage pad, so the current ISFSI storage pad will have sufficient capacity to hold 36 casks. Thirteen casks loaded with SNF have already been placed on the existing ISFSI pad. Michael Twomey, Entergy VY ("Twomey") pf. at 2; George Thomas, Entergy VY ("Thomas") pf. at 3, 8; exh. EN-GT-3 at 6.

2. To complete decommissioning of the VY Station, all SNF that has not already been placed in dry-cask storage will have to be moved from the spent fuel pool to dry-cask storage. Twomey pf. at 3.

3. Entergy VY estimates that 58 casks will be required to hold all SNF generated by the VY Station following the facility's closure at the end of 2014. Twomey pf. at 3; Thomas pf. at 8.

4. Entergy VY seeks approval to construct this second ISFSI storage pad and a 200-kW diesel generator and related barrier wall. Together, the new pad and existing pad will hold casks to store all of the SNF generated by the VY Station through the plant's permanent shutdown at the end of 2014. Thomas pf. at 3, 5-6.

5. The proposed second ISFSI storage pad is sized for 25 cask spaces, for a total capacity of 65 spaces between the two pads. In conjunction with the existing ISFSI, the proposed second ISFSI would have space to store the 58 SNF casks plus up to three additional casks of greater than Class C waste. Four other cask spaces must be left open to allow for movement of and access to casks stored on the pad. Thomas pf. at 8; tr. 2/23/16 at 27-28 (Thomas); Twomey pf. at 3.

6. Entergy VY plans to commence loading additional casks with SNF and moving them to the existing ISFSI pad during 2017. Tr. 2/23/16 at 8 (Thomas).

7. Commencing loading in 2017 will provide a higher level of confidence that all of the plant's SNF will be transferred to dry storage by 2020 without increasing costs and will allow Entergy VY to address any contingencies that may arise if technical or other problems are

encountered. Thomas reb. pf. at 3-4; tr. 2/23/16 at 33 (Thomas), 176 (Christopher Recchia, DPS (“Recchia”)).

8. Entergy VY’s supply vendor, Holtec, has indicated that it can deliver storage equipment to meet the loading schedule. Thomas reb. pf. at 3.

9. Based on Entergy VY’s current Decommissioning Cost Estimate, delaying transfer of all VY Station SNF to dry storage beyond 2020 would increase decommissioning costs. Thomas supp. pf. 5-6.

10. Entergy VY has proposed a construction schedule for the Project beginning in mid-June 2016 and ending in mid-November 2017. Thomas supp. pf. at 5.

The Second ISFSI Pad

11. The Project primarily consists of constructing a second ISFSI storage pad made of highly engineered concrete, measuring approximately 93 feet by 76 feet and located approximately 30 feet immediately west of the existing ISFSI storage pad. Thomas pf. at 5, 15.

12. The second pad will be similar to the existing pad and will comply with the Holtec Final Safety Analysis Report, which addresses seismic issues, fire and explosion hazards, flooding, snow and ice, and projectile objects, to support casks loaded with SNF. Thomas pf. at 15.

13. Entergy VY will excavate to approximately five feet below grade to construct the second ISFSI pad. It will then pour a leveling slab and backfill with an engineered backfill soil. Thomas pf. at 16.

14. The ISFSI pad will be a three-foot-thick monolithic structure containing steel rebar and concrete built during a continuous concrete pour. Thomas pf. at 16.

15. The proposed pad will be connected to the existing pad by removing the existing west-facing access ramp, installing a similar concrete apron for the proposed pad, installing a 30-foot-long by 24-foot-wide concrete connector between the apron of the existing pad and the proposed apron, and installing a west-facing access ramp from the proposed apron. Thomas pf. at 15-16.

Dry Cask Storage System

16. Entergy VY plans to use the Holtec HI-STORM 100 system for dry cask storage of SNF at the VY Station site. This is the same system that Entergy VY has used for its existing storage. Thomas pf. at 6.

17. The Holtec HI-STORM 100 dry cask storage equipment includes multi-purpose canisters ("MPC") into which SNF will be loaded; a "HI-TRAC" transfer container that will be used to transfer the MPCs within the Reactor Building; a "HI-STORM 100S overpack" (or "cask") into which each MPC will be transferred from the HI-TRAC; and the ISFSI storage pad on which the HI-STORM 100 overpacks will be stored. Thomas pf. at 7.

18. Entergy VY will be able to use existing infrastructure when transferring SNF to the second ISFSI storage pad. Thomas pf. at 7-8.

200-kW Diesel Generator

19. Entergy VY proposes to replace an existing 175-kW diesel generator with a new 200-kW diesel generator with an above-ground fuel-oil storage tank, and an uninterruptible power supply and associated battery bank, to supply backup power to the ISFSI complex and security equipment at the VY Station and other on-site electrical needs. Thomas pf. at 12, 13.

20. The generator will be mounted in a metal enclosure/foundation base that measures approximately 12 feet wide by 35 feet long by 12 feet high, with a ventilation hood having an approximately 52-inch overhang to be installed along the southeast side of the enclosure. Thomas supp. pf. at 6-7.

21. The metal enclosure will have two compartments, with the diesel generator in one compartment and the uninterruptible power supply and associated battery bank and electric panels in the other. Thomas pf. at 12.

22. The generator's fuel tank will be a 1,200-gallon, above-ground, double-wall fuel storage tank surrounded by a 1,350-gallon rupture basin that has a switch to detect a fuel leak from the tank. The tank and basin will be mounted within the foundation base that is located between the enclosure and the foundation pad. Thomas pf. at 13; Thomas supp. pf. at 7.

23. Approximately 150 feet of underground electrical duct bank, which will contain the cables to connect the off-site power source and diesel-generator loads to the electrical panels within the enclosure, will be installed in the plant's Protected Area. Thomas pf. at 13.

24. The enclosure for the 200-kW diesel generator will be surrounded on three sides by a barrier wall measuring 16 feet high and 8 feet thick. The wall's exterior surface will be Cor-Ten steel, which resists corrosion and has a dark brown appearance when exposed to the elements. Thomas supp. pf. at 6.

25. Other than initial startup and periodic testing, the 200-kW diesel generator will be used solely as an on-site backup power source. The generator is expected to operate less than 20 hours per year and will not require any changes to the transmission facilities connecting to the VY Station. Thomas pf. at 14.

Site Preparation

26. Construction activities associated with the Project will occur within the VY Station's protected area, except for the temporary storage of construction material and long-term storage of excavated soil, which will be located in the plant's Owner Controlled Area. Thomas pf. at 6.

27. Engineering seismic response analyses for the ISFSI pad determined that the pad can be constructed in the proposed location in compliance with NRC regulations and Holtec's Certificate of Compliance for the HI-STORM 100 system. Thomas supp. pf. at 3-4; tr. 2/23/16 at 32-33, 35 (Thomas).

28. NRC staff reviewed and did not identify any issues with the engineering-design calculations for the proposed ISFSI pad. Thomas reb. pf. at 4; tr. 2/23/16 at 9 (Thomas); exh. Entergy VY-5.

29. The second ISFSI storage pad will be constructed where the North Warehouse and a 175-kW diesel generator are currently located. Prior to excavation, Entergy VY will remove these structures, except that half of the three-foot-high, east frost wall will remain to ensure that the existing ISFSI pad has adequate lateral support during excavation for the second ISFSI pad. Thomas pf. at 6, 9, 18; Thomas reb. pf. at 4.

30. The tools, material, and equipment in the North Warehouse will be surveyed for radioactive contamination and will either be released for reuse or disposal or, if contaminated, relocated to the Turbine Building. Thomas pf. at 11.

31. Once tools, material, and equipment are removed from the North Warehouse, Entergy VY will conduct a radiation survey, a lead-paint survey, and an asbestos survey of the warehouse and the waste-oil burner in the warehouse, and areas requiring remediation will be identified and marked. Thomas pf. at 11.

32. Entergy VY plans to follow the Vermont Department of Health's asbestos regulations as necessary and use certified personnel during any remediation of asbestos. Thomas pf. at 11.

33. The Stipulation between Entergy VY and ANR establishes how Entergy VY will comply with the federal Environmental Protection Agency's Mixed Waste Rule for waste resulting from the North Warehouse's demolition and the actions it will take with respect to soil contaminated with non-radiological hazardous waste excavated within the Project boundaries. Exh. Entergy VY-3 at 2-7.

34. Entergy VY will remove the 175-kW diesel generator and underground storage tank in accordance with the Vermont Underground Storage Tank Rules and the Vermont Underground Closure and Site Assessment Regulations. Thomas pf. at 11-12.

35. Entergy VY will reroute or disconnect underground utilities and remove stormwater piping in the location of the proposed second ISFSI storage pad. Thomas pf. at 10.

36. Entergy VY will install two new drain manholes and approximately 115 feet of stormwater pipe to allow proper drainage of the area between the two pads and the area to the south of the ISFSI pad. The VY Station's Individual Stormwater Permit reflects this installation. Thomas pf. at 10-11; exh. Entergy VY-1.

Consideration of Alternatives

37. Some form of spent fuel storage and management at the VY Station is necessary because the the U.S. Department of Energy ("DOE") is not accepting SNF for off-site storage at this time. Thomas pf. at 19.

38. Entergy VY considered several alternatives to its proposal to construct an above-ground ISFSI pad located 30 feet west of the existing ISFSI pad. Thomas pf. at 5, 20.

39. Specifically, Entergy VY considered keeping SNF in the plant's spent fuel pool; underground storage of SNF in dry casks; and storage of SNF in above-ground casks on an ISFSI pad located elsewhere on the site. Thomas pf. at 20-22.

40. Keeping SNF in the existing pool is not a substitute for constructing a second ISFSI storage pad, because the VY Station cannot be fully decommissioned until all SNF has been removed from the pool and it is not known at this time when DOE will accept the fuel for permanent off-site storage in quantities sufficient for the removal of all of the plant's SNF from the pool. Thomas pf. at 20.

41. Keeping the VY Station's spent fuel pool operating would require Entergy VY to incur significant personnel and other operating expenses that Entergy VY could seek to fund from the Plant's Nuclear Decommissioning Trust. Thomas pf. at 20.

42. Entergy VY considered storing SNF using the HOLTEC HI-STORM 100U, an underground storage design, but concluded that use of the 100U would be significantly more difficult and substantially more expensive to install (in the range of \$30 million) as compared to the above-ground HI-STORM 100 used for the first pad, particularly if the system were also used to store the spent fuel already moved into casks on the existing pad. Thomas pf. at 21; tr. 2/23/16 at 15 (Thomas).

43. Given space constraints in the plant's Protected Area, Entergy VY concluded that it would be extremely difficult and expensive to excavate to the depths required to build the underground facility within this area. Thomas pf. at 21; tr. 2/23/16 at 14-15, 19 (Thomas).

44. To place the 100U casks all the way into the ground could result in a long-term operational issue because of relatively high groundwater levels at the site. Tr. 2/23/16 at 17, 25 (Thomas).

45. Underground storage would require excavation down to about 25 feet. However, because of the groundwater levels at the Vermont Yankee site, the 100U system would be limited to somewhere in the range of 14-15 feet below ground, which would mean that the system would extend seven or eight feet above ground. Tr. 2/23/16 at 25 (Thomas).

46. There is limited operational experience with the 100U system. Thomas supp. pf. at 7-8.

47. Construction of an ISFSI using the 100U would also delay completion of SNF transfer to dry storage by at least two years. Thomas supp. pf. at 8; tr. 2/23/16 at 14-15, 19, 25-26 (Thomas).

48. Locating the second ISFSI storage pad on-site but outside of the plant's Protected Area would require new security facilities to comply with NRC security requirements as well as additional facility upgrades to allow transfer of casks to the new ISFSI pad, which would be more difficult and costly. Thomas pf. at 21-22.

49. Locating the ISFSI pad on the north side of the VY Station site is not possible because the existing VELCO substation significantly limits the land area available to site the pad, and land to the north and east of the substation is subject to transmission right-of-way agreements. Thomas reb. pf. at 11.

50. Locating the pad to the west of the VELCO substation or on the south side of the VY Station site would create problems complying with federal and more stringent Vermont radiation boundary-dose requirements as well as aesthetic problems related to lighting. Thomas reb. pf. at 11, 12.

51. Entergy VY considered locating the pad to the east of the West Cooling Tower, but this location offers no advantages as compared to the proposed pad location, and the West Cooling Tower Deep Basin is planned to remain in-service as a back-up supply of make-up water until all fuel has been removed from the plant's spent fuel pool. Thomas reb. pf. at 11.

52. Locating the pad outside of the VY Station's Owner Controlled Area would require approval from the NRC with the potential for long delays. Thomas reb. pf. at 12-13.

53. Entergy VY determined that locating the pad on available land to the west of the Owner Controlled Area would be too close to residential property along Governor Hunt Road considering the potential impacts of radiation dose and security lighting on the neighboring properties. Thomas reb. pf. at 12.

54. Any new location, off- or on-site, would require a new geological analysis and new engineering designs and a new haul path, which Entergy VY estimates could delay construction for an additional year at a minimum. Tr. 2/23/16 at 20-21 (Thomas).

55. Constructing the second pad near the existing pad will not adversely affect the ability of Entergy VY to decommission the plant and remove existing structures. A change in the approach to demolish the Reactor Building may be required, but the presence of fuel on the two ISFSI pads will not inhibit demolition or require moving the fuel to another location. Tr. 2/23/16 at 10-13 (Thomas), 90 (Twomey).

56. The second pad will be located farther from the Reactor Building than the existing pad, and as a result will have less of an impact on decommissioning the Reactor Building than the existing pad already has. Tr. 2/23/16 at 38, 40 (Thomas), 183-184 (Recchia).

57. Locating the ISFSI off-site would introduce a radiological component to a location that does not already have one, which would not be reasonable. Tr. 2/23/16 at 184 (Recchia).

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

58. 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 and the legislative bodies and the land conservation measures contained in the Vernon Town Plan. This finding is supported by findings 59 through 65 below.

59. The Project is essential to the orderly and timely closure and eventual dismantling of the VY Station. Dodson pf. at 25.

60. By enabling decommissioning, the Project will facilitate potential re-use of the site. Twomey pf. at 5.

61. The Project does not affect the land-conservation measures of the Vernon Town Plan related to the preservation of the town's rural scenic character, scenic roads, natural, historic, and environmental resources, or the plan's promotion of downtowns and villages. Dodson pf. at 26.

62. The Project is within the existing VY Station site, which is and will remain an industrial area. Dodson pf. at 26.

63. The Project is minimally visible to small portions of the surrounding area. Dodson pf. at 26.

64. The Project will not have any impacts on historic resources, villages, or scenic roads. Dodson pf. at 26.

65. The Vernon Selectboard voted unanimously to support the Project, finding that it is in the best interest of the Town of Vernon. The Vernon Planning Commission also voted unanimously that the Project will not unduly interfere with the orderly development of the region. Twomey pf. at 4; exh. EN-TMT-2.

Discussion

The proposed Project is not expected to interfere with the orderly development of the region. As the findings demonstrate, the Project is located on an existing industrial site, one that is expected to remain so until decommissioning. It is not inconsistent with the Vernon Town Plan and is supported by the Town of Vernon. Moreover, the Project will enable the VY Station site to be decommissioned and the site restored. Entergy VY may not commence decommissioning until the SNF is removed from the spent fuel pool. Construction of the Project will allow this to occur. Thus, the Project may have positive long-term impacts. That said, the Board understands that site restoration may be many years in the future. At this time, we do not know when the SNF may be removed by the DOE. Entergy VY has not committed to a timetable for decommissioning and site restoration. Nonetheless, even though these benefits may be far in the future, they cannot occur until the SNF has been removed to dry cask storage.

WRC and NEC both question whether Entergy VY has made an adequate showing that the Project will not interfere with orderly development. WRC is concerned that construction of the second ISFSI and its location near the reactor building might have an impact upon the manner in which decommissioning is performed and potentially drive up the cost. Such cost increase could, in turn, affect the amount of money that is available for site restoration, which WRC asserts would be inconsistent with orderly development.

NEC asserts that Entergy VY has not adequately evaluated alternatives to siting the Project as Entergy VY has proposed and that, in the absence of such an evaluation, Entergy VY has not demonstrated that this Project is consistent with orderly development. NEC faults Entergy VY for not giving greater consideration to the possibility of storing the SNF in an underground system that has been licensed by the NRC. NEC also argues that Entergy VY

should engage in a process of public engagement to help identify the best siting options and should evaluate alternatives throughout Windham County.

We are not persuaded by the arguments of WRC. The evidence does not support the conclusion that the construction of the second ISFSI will have a material impact on the timing or cost of decommissioning. Testimony from Entergy VY witnesses and Entergy VY's Site Assessment Study indicate that the Reactor Building will be challenging to decommission. The Site Assessment Study observes that the presence of SNF in dry casks may "inhibit demolition or restrict the methodologies available for demolishing the Reactor Building" and/or nearby structures.⁸ Nonetheless, Entergy VY believes that while the presence of the fuel may change the approach to demolishing the reactor building, the decommissioning analysis and cost estimates were performed with knowledge of the first ISFSI. Thus, the present costs would not increase further.⁹ Moreover, any effect on demolition is due primarily to the presence of the first ISFSI, which is not under review in this proceeding. The Project will be located farther from the Reactor Building than the existing ISFSI so would have less effect.¹⁰ Thus, while we share WRC's objective of trying to ensure timely and complete decommissioning and site restoration, and therefore avoiding actions that might adversely affect that outcome, we cannot conclude that the construction of the second ISFSI and storage of SNF thereon will have a material effect on future decommissioning.

We also find NEC's arguments unconvincing. The evidence presented by Entergy VY demonstrates that Entergy VY considered a variety of locations on the VY Station site. Entergy VY also considered the option of underground storage. Entergy VY concluded that the location of the Project and above-ground storage were preferable to the other alternatives. NEC presented no evidence to refute the analyses performed by Entergy VY.

We understand NEC's desire for a broader assessment of alternatives, but we also recognize that requiring such an assessment is unlikely to produce material benefits. It would inevitably delay the removal of the SNF from the spent fuel pool. Not only would Entergy VY

8. Tr. 2/23/16 at 12 (Thomas).

9. Tr. 2/23/16 at 13 (Thomas).

10. Tr. 2/23/16 at 12-3 (Thomas).

need to look at other sites, it would need to conduct the required geotechnical analysis and engineering work to design a new pad. Siting the ISFSI outside the Owner Controlled Area would require NRC approval. Such placement would also increase costs, as Entergy VY would need to design, deploy, and maintain security arrangements. Moreover, we are not persuaded that consideration of locations outside the VY Station site would yield material benefits to the State. In addition to the cost and time delays noted above, location of the ISFSI off-site would likely require legislative approval under Chapter 157 of Title 10. There is no evidence, moreover, that the NRC would license such a site, even assuming the State of Vermont supported such a license application. As DPS Commissioner Recchia testified, “introducing a radiological component to a place that has not had one before does not seem prudent”¹¹

If the evidence suggested serious flaws in Entergy VY’s analysis of alternatives or the likelihood that either an alternative location or methodology (*i.e.*, underground storage) were superior, we might reach a different conclusion. However, NEC presented no evidence on these points. As a result, we conclude that the comparison undertaken by Entergy VY was reasonable and sufficient, and that the speculative benefits from any further analysis are significantly outweighed by the likely significant additional costs and delays resulting from the implementation of any change in location as well as by any delay in transferring SNF from the spent fuel pool to dry storage.

D. Need for Present and Future Demand for Services [30 V.S.A. § 248(b)(2)]

66. The construction of a second ISFSI storage pad is needed to store SNF from the VY Station’s prior operations that, as determined by the Board in prior dockets, met the present and future demand for electric service at that time. Twomey pf. at 5.

67. Construction of a second ISFSI storage pad is necessary to enable decommissioning of the VY Station site. After decommissioning, the VY Station site could at some point in the future be reused for electric-generation purposes to meet the need for present and future demand for service at that time, due to the site’s existing high-voltage infrastructure and location relative to VELCO’s 345/115 kV Vernon Substation. Twomey pf. at 5.

11. Tr. 2/23/16 at 18 (Recchia).

E. System Stability and Reliability [30 V.S.A. § 248(b)(3)]

68. The Project does not include any components that could adversely affect the electric system's stability or reliability. Twomey pf. at 8.

F. Economic Benefit [30 V.S.A. § 248(b)(4)]

69. The Project will result in an economic benefit to the state and its residents. This finding is supported by findings 70 through 75, below.

70. The Project's construction will promote economic activity in Vermont and is anticipated to benefit the local economy through Entergy VY employees and contractors frequenting local merchants that provide lodging and food services. Twomey pf. at 5.

71. The Project is needed to decommission the VY Station so that the site may be reused for an economically beneficial purpose. Twomey pf. at 5; Recchia pf. at 2.

72. Transfer of all VY SNF to dry casks is necessary in advance of dismantlement and decontamination activities, restoration of the site for unrestricted use, and eventual reuse of the site. Recchia pf. at 2; Twomey pf. at 5-6.

73. Transfer of all VY Station irradiated spent fuel to dry casks will eliminate costs associated with the spent fuel pool. Twomey pf. at 6.

74. This Project is not expected to significantly delay the demolition of existing VY Station structures or restoration of the VY Station site so that the site may eventually be reused. *See* tr. 2/23/16 at 13, 38-39 (Thomas), 173 (Recchia).

75. It is in the economic interest of Vermonters to have the SNF removed from the spent fuel pool and transferred to dry cask storage as soon as possible. The State has an interest in having the site restored to a greenfield condition, which will allow productive economic use. Timely decommissioning (which cannot occur until the SNF has been removed) facilitates this outcome. Recchia pf. at 2.

Discussion

Entergy VY and the Department both maintain that the Project will have an economic benefit to the State of Vermont. The Department asserts that direct benefits accrue through employment of Vermont residents and the secondary economic benefits that accrue from expenditures associated with the Project. In addition, the Department contends that the Project is necessary to facilitate timely decontamination and dismantlement of the VY Station and restoration of the site. This, in turn, will enable the site to be reused and provide future economic benefits.

We agree with the parties that the Project will result in an economic benefit to the State of Vermont for the reasons put forward by the Department.

G. Aesthetics, Historic Sites, Air and Water Purity, and the Natural Environment and Public Health and Safety [30 V.S.A. § 248(b)(5)]

76. The Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment or 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). This finding is supported by Findings 77 through 156 below.

Public Health and Safety [30 V.S.A. § 248(b)(5)]

77. The Project will not have an undue adverse effect on the public health and safety generally or on the town of Vernon. John Goodell, Entergy VY ("Goodell") pf. at 9; exh. EN-TMT-4; exh. EN-TMT-5.

78. The boundary dose of spent fuel in casks loaded on the pads is expected to be less than 11.6 millirem per year and complies with Vermont's Radiological Health Rule. Thomas pf. at 9.

79. The Project will not be an undue burden on the provision of adequate police services in Windham County or the town of Vernon. Twomey pf. at 6-7; exh. EN-TMT-4.

80. The Project will not be an undue burden on the Vernon Fire Department's ability to provide adequate fire-protection services. Twomey pf. at 7; exh. EN-TMT-5.

Water Pollution [10 V.S.A. § 6086(a)(1), (A)-(C), (E)-(G), (a)(2), (a)(3)]

81. The Project will not cause undue water pollution and will comply with applicable regulations adopted by the Vermont Department of Environmental Conservation (“VDEC”). Goodell pf. at 3, 5;; findings 82-85, below.

82. The Project will not affect any wells or water sources on the VY Station site. Goodell pf. at 5.

83. During construction, stormwater will be managed in accordance with the Project’s Erosion Control Plan, which includes the use of stone check dams, silt fencing, and construction fencing to limit the area of disturbance. Goodell pf. at 5; exh. Entergy VY-1; exh. EN-JG-5.

84. Upon completion of construction, the Project will result in approximately 5,350 square feet of new impervious surface area at the site. Runoff will be treated in accordance with VDEC requirements and use spare capacity in the existing sand-filter treatment tank. Goodell pf. at 5; Goodell supp. pf. at 3; exh. EN-JG-9.

85. Entergy VY has obtained a Vermont Individual Stormwater Permit to address the new impervious surface area that the Project will create at the site. Exh. Entergy VY-1.

Air Pollution [30 V.S.A. § 248(b)(5) and 10 V.S.A. § 6086(a)(1)]

86. The construction and operation of the Project will not cause undue air pollution. Goodell pf. at 3.

87. Construction of the Project will not result in any significant sources of air emissions, other than construction-related dust and exhaust from construction equipment. If necessary, Entergy VY can control construction-related dust by use of water. Goodell pf. at 3.

88. The VY Station has an Air Source Registration, because it is a registered source under the Vermont Air Pollution Control Regulations. Goodell pf. at 3.

89. The VY Station does not need an Air Pollution Control Operating permit because its current air emissions are less than 10 tons per year. Goodell pf. at 3

90. The proposed 200-kW diesel generator is a backup source of power and does not require an Air Pollution Control Operating Permit. Entergy VY will include emissions associated with

the new 200-kW diesel generator in its annual Air Emissions Inventory Report to ANR. Goodell pf. at 4.

Noise [10 V.S.A. § 6086(a)(1)]

91. Noise from the construction and operation of the Project will not be unduly adverse. Goodell pf. at 4.

92. Noise associated with the construction of the Project will consist of construction vehicles and equipment working at the VY Station site, similar to previous construction projects at the site. Goodell pf. at 4.

93. Noise during operation of the Project will consist primarily of routine test runs of the proposed 200-kW diesel generator. This generator, which has an overall sound level of 84.6 dBA at 49.2 feet when operating at full load, will be installed in a sound-attenuating enclosure designed to provide a minimum of 25-dBA noise reduction. Goodell pf. at 4.

94. The proposed 200-kW diesel generator will be installed at least 400 feet from the nearest property line and should not have a noise level materially different from the existing 175-kW diesel generator that is being removed as part of the Project. Goodell pf. at 4-5.

Greenhouse Gases [30 V.S.A. § 248(b)(5)]

95. Entergy VY plans to minimize truck trips during construction of the Project to limit the amount of greenhouse gas emissions. Goodell pf. at 6.

96. The forecasted number of truck visits during construction is 450 (900 truck trips). Goodell supp. pf. at 4.

97. Once construction of the Project is completed, the only source of greenhouse gases will be test runs of the 200-kW diesel generator, which is EPA Tier 3 compliant. Goodell pf. at 6.

98. Neither the construction of the Project nor future operation of the generator will cause an undue adverse impact with respect to greenhouse gases. Goodell pf. at 6.

Outstanding Resource Waters [10 V.S.A. § 1424a(d) & 30 V.S.A. § 248(b)(8)]

99. The Project is located near the Connecticut River, which is not designated as an

outstanding resource water. The Project therefore will have no adverse effect on any outstanding resource waters. Goodell pf. at 13.

Headwaters [10 V.S.A. § 6086(a)(1)(A)]

100. The Project will not have an undue adverse impact on headwaters. This finding is supported by findings 101 and 102, below.

101. The Project is located in a drainage area greater than 20 square miles (the Connecticut River) but is not located in the headwaters of applicable watersheds, characterized by steep slopes and shallow soils, is not over 1,500 feet in elevation, is not in the watershed of a public-water supply as designated by the VDEC's Water Supply Area, and is not in a significant aquifer-recharge area. Goodell pf. at 6-7.

102. Surface water at the VY Station either leaches into the ground and travels a short distance through sandy soil where it discharges along the riverbank of the Connecticut River or is collected in the existing storm-drain system and directly discharged into the river. Goodell pf. at 7.

Waste Disposal [10 V.S.A. § 6086(a)(1)(B)]

103. The Project will meet the applicable VDEC regulations and the requirements in the Stipulation concerning the disposal of waste, including non-radiological hazardous waste. Goodell pf. at 7; exh. Entergy VY-3 at 6.

104. The Project does not involve the injection of waste materials or harmful toxic substances into groundwater or wells. Goodell pf. at 7.

105. Entergy VY will manage excavated soil under NRC requirements for on-site disposal of slightly radiologically contaminated material, and Entergy VY will follow the Vermont Department of Health asbestos regulations, as necessary, when removing the North Warehouse structure from the site. Goodell pf. at 7, 8; Thomas pf. at 11, 16-17.

106. Entergy VY will recycle, store, or dispose of other materials in accordance with Entergy VY protocols, Vermont solid-waste requirements applicable to those materials, and the Stipulation. Goodell pf. at 8; Thomas reb. pf. at 10; exh. Entergy VY-3 at 6.

107. The Stipulation requires Entergy VY to determine whether cable sheathing removed during construction is subject to regulation as non-radiological hazardous waste pursuant to Section 7-202(b) of the Vermont Hazardous Waste Management Regulations (“VHWMR”), and if it is, to manage and dispose of the cable sheathing in accordance with the VHWMR. Exh. Entergy VY-3 at 6.

108. The Stipulation also requires Entergy VY to notify ANR of its intention to manage low-level mixed waste under the federal Mixed Waste Rule. Exh. Entergy VY-3 at 6.

109. Entergy VY will remove the existing underground oil storage tank associated with the 175-kW diesel generator in compliance with the Vermont Underground Storage Tank Rules and the Vermont Underground Closure and Site Assessment Regulations. Thomas pf. at 11-12.

Water Conservation [10 V.S.A. § 6086(a)(1)(C), (a)(2), (a)(3)]

110. The Project will not have water-supply or wastewater connections and is not anticipated to increase water use at the VY Station. Goodell pf. at 8.

Floodways & Erosion [10 V.S.A. § 6086(a)(1)(D), (a)(4)]

111. The Project will maintain the natural condition of streams and will not endanger the health, safety, or welfare of the public or adjoining landowners. Goodell pf. at 9.

112. The Project is not located within a floodway or floodway fringe. Goodell pf. at 8; Goodell reb. pf. at 2.

113. The Project site is well outside of the 100-and 500-year floodplains, and the Project is located approximately 900 feet away from the closest stream and 300 feet from the mean high-water mark of the Connecticut River. Goodell pf. at 8-9; Goodell reb. pf. 2; exh. EN-JG-4.

114. The Project site is located “at an elevation that is more than 20% above the 1% annual chance flood elevation and thus is not within the regulatory Floodway Hazard Area.” Evans pf. at 6.

115. The Project will not increase flood elevations or velocities, or exacerbate fluvial erosion. Evans pf. at 8.

116. Under the Stipulation, Entergy VY must obtain a state floodplain permit for the Project under ANR's Flood Hazard Area and River Corridor Rule prior to the start of site preparation and construction activities for the Project and to comply with the permit's terms. Exh. Entergy VY-3 at 6-7.

117. ANR issued Entergy VY a Flood Hazard Area and River Corridor permit for the Project on February 17, 2016. Exh. Entergy VY-2.

118. The Project's total ground disturbance is 1.07 acres and triggers the need for coverage under the Vermont Construction General Permit 4213-9020, which Entergy VY received on June 12, 2015. Goodell supp. pf. at 3:2-7; Chris Gianfagna, ANR ("Gianfagna") pf. at 3 and 4.

119. Entergy VY will manage the construction site in accordance with the Project's Erosion Control Plan, which requires the use of control practices and inspection and report keeping, and with the Vermont Low Risk Site Handbook for Erosion Prevention and Control, which reflects the requirements of the Vermont General Construction Permit 3-9020 for low-risk sites. Goodell pf. at 10; Goodell supp. pf. at 3; exh. EN-JG-9.

Streams [10 V.S.A. § 6086(a)(1)(E)]

120. The Project will not affect a small, unnamed stream located 900 feet to the north of the Project area, because stormwater discharged from the Project area will either leach into sandy soil or be treated in the existing sand-filter tank and discharged into the nearby Connecticut River via the drainage piping that currently exists at the site. Goodell pf. at 7, 9.

Shorelines [10 V.S.A. § 6086(a)(1)(F)]

121. The Project does not involve construction on or the use of shorelines. Once constructed, the second ISFSI storage pad will be located more than 300 feet from the mean high-water mark of the Connecticut River. Goodell pf. at 9.

122. The Project site has already been extensively developed. As a result, the Project will not change the natural conditions of the waters or the lands adjacent to the Connecticut River. Goodell pf. at 9.

123. The Project will not affect existing access to the Connecticut River, which is already prohibited for security and safety reasons. Goodell pf. at 10.

Wetlands [10 V.S.A. § 6086(a)(1)(G)]

124. There will be no undue adverse impacts on wetlands, because the Project area is already highly developed and does not have wetlands that would be subject to U.S. Army Corps of Engineers or state requirements. Goodell pf. at 10.

Transportation [10 V.S.A. § 6086(a)(5)]

125. The Project's construction will not cause unreasonable congestion or unsafe conditions with respect to transportation. Goodell pf. at 11.

126. The Project will require approximately 450 truck visits (900 truck trips) for all construction activities, but no special traffic requirements will be necessary, other than local traffic management around the construction site. Goodell pf. at 11; Goodell supp. pf. at 4.

127. The Project will require approximately 85 truck visits (170 truck trips) on the day the concrete is poured for the second ISFSI storage pad, which is anticipated to be the heaviest construction-related traffic day of the Project. Even on this day, traffic will be less than for other projects and previous refueling outages at the VY Station. Goodell pf. at 11; Thomas pf. at 19.

Education and Municipal Services [10 V.S.A. § 6086(a)(6), (7)]

128. The Project will not change the number of Entergy VY employees or the number of children of these employees educated in the area; therefore, the Project will have no impact on educational services. Goodell pf. at 12.

129. The Project will not unreasonably burden municipal services. Goodell pf. at 12; Twomey pf. at 4, 6-7; exh. EN-TMT-2; exh. EN-TMT-4; exh. EN-TMT-5.

Aesthetics [30 V.S.A. § 248(b)(5) & 10 V.S.A. § 6086(a)(8)]

130. The Project will not have an undue adverse impact on aesthetics or the scenic or natural beauty of the area. This finding is supported by findings 131 through 148, below.

131. The Project will be located inside the Protected Area of the VY Station, among many existing industrial structures, including the existing ISFSI pad that was previously permitted and constructed. Dodson pf. at 3, 4.

132. The existing ISFSI and the casks stored on it form an established backdrop against which the Project would be viewed. Dodson pf. at 4.

133. The immediate surroundings of the Project currently include the VY Station's Turbine Building and attached administration building 30 feet to the south and the existing ISFSI pad 30 feet to the east. Dodson pf. at 8; exh. EN-HLD-19.

134. The existing ISFSI pad is surrounded on the east and the north by a wooden screening wall approximately 22 feet above site grade. Dodson pf. at 8; exh. EN-HLD-19.

135. The site of the proposed second ISFSI pad is surrounded by a chain-link security fence approximately 12 feet high, occasional guard houses, lighting, and security towers. The site is illuminated at night for security purposes. Dodson pf. at 8.

136. The second ISFSI pad and casks will be visible at a distance of up to one mile to the northeast as a minor visual element within a much larger industrial complex. Dodson pf. at 11.

137. Under existing conditions, the area from which the Project will be visible is mostly limited to sections of open water on the Connecticut River and portions of the banks of the river in Hinsdale, New Hampshire. Some portions of the bluff along the river in Hinsdale will have partial, screened views of the second ISFSI storage pad and casks in winter. Dodson pf. at 11; exh. EN-HLD-15; tr. 2/23/16 at 50-52 (Dodson).

138. Wooded hills in Hinsdale approximately two to three miles from the site will not have significant views of the Project due to their distance from the site, the relatively small size of the Project and the fact that the hills are covered by dense forest. Dodson pf. at 11; exh. EN-HLD-15.

139. All views of the Project will be limited. Dodson pf. at 11.

140. After the VY Station is decommissioned, views of the Project from the northeast will remain unchanged. Although views of the Project from the southeast will increase, they will remain limited. Dodson at 11-12; exh. EN-HLD-16; exh. EN-HLD-20; exh. EN-HLD-21.

141. In areas where the Project will be visible, visual impacts will be minimal due to the Project's relatively small size, the distance from most views of the Project, and the role of the bluffs in reducing the extent of such views. Dodson pf. at 12.

142. The Project will be one of many industrial components of the VY Station and will be relatively small compared to adjacent structures. Dodson pf. at 12-13; tr. 2/23/16 at 54-55 (Dodson).

143. The colors used for the Project will fit in with the surrounding structures. The casks will be metal, and will be painted grey with a flat finish. Dodson pf. at 14.

144. The barrier wall surrounding the proposed diesel generator will be constructed with a surface of Cor-Ten steel, which forms a rust-like dark brown appearance when exposed to weather. The Cor-Ten steel will blend in with the existing buildings and security infrastructure on-site as well as the pine forest in the background of the site. Dodson supp. pf. at 3.

145. The aesthetic characteristics of the Project are consistent with the policies of the Vernon Town Plan. The Project will not violate any clear, written community standards applicable to scenic resources in the Vernon Town Plan or the Windham Regional Plan. Dodson pf. at 17-19.

146. The Project will not offend the sensibilities of the average person because it will have limited visibility and will appear to be an integral part of an existing industrial complex. Dodson pf. at 22-23.

147. Entergy VY has taken generally available mitigating steps to improve the harmony of the Project with its surroundings, including locating it within the existing industrial complex and using colors that blend in with existing structures. Dodson pf. at 23.

148. Extending the existing wooden screen, or line-of-sight barrier, located east and north of the existing ISFSI pad would accomplish minimal visual mitigation and could make the Project more prominent by introducing a large and uniform visual element into the site. Dodson pf. at 23; tr. 2/23/16 at 64-66 (Dodson).

Discussion

In determining whether a proposed project would have an undue adverse impact on aesthetics, the Board has adopted the Environmental Board's Quechee test. The Board has previously summarized the Quechee analysis as follows:

In order to reach a determination as to whether the project will have an undue adverse effect on the aesthetics of the area, the Board employs the two-part test first outlined by the Vermont Environmental Board in Quechee, and further defined in numerous other decisions.

Pursuant to this procedure, first a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse effect of the project is "undue." The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:

1. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
2. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
3. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

In addition to the Quechee analysis, the Board's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."

In this case, we find that construction of the Project will not have an adverse aesthetic effect under the first prong of the Quechee test. In 2006, we considered Entergy VY's petition to construct the first ISFSI. At that time, we concluded as follows:

There is substantial evidence to indicate that the spent fuel storage facility will not create an undue adverse effect on aesthetics. Not only will the proposed Project be compatible with its industrial surroundings, the colors and the materials with which it is comprised will be consistent with and suitable for the surrounding area. The Project does not violate principles articulated in the Windham County Regional Plan, the Vernon Town Plan or the Master Plan for the Town of Hinsdale. Because it is located in an industrial site and will be visible only from the Connecticut River and the New Hampshire shore, the Project should not offend the sensibilities of the average person.

In addition, Entergy VY has agreed to mitigate potential aesthetic impacts by constructing a 20-foot-tall fence. It is proposed to be dark green and should appear similar in scale and color to other existing buildings at Vermont Yankee. The fence should screen nearly the entire view of the spent fuel casks from the Connecticut River and New Hampshire shore.¹²

The same observations hold true today with respect to the second ISFSI. It will be located in an existing industrial site, adjacent to the first ISFSI. To a large degree, it will be indistinguishable from the first ISFSI, except that the size of the combined facility will be greater. It will also replace existing buildings on the VY Station site. Moreover, both before and after decommissioning, visibility of the Project will be limited. In areas where it will be visible, the Project will appear as a relatively small component of an existing, large industrial site. Construction of the Project will facilitate decommissioning of the VY Station, which will result in a large improvement to the aesthetics of the area.

Even if the evidence supported a finding of adverse impact to the area's aesthetics, the impact is not unduly adverse. The Project will not violate any clear, written community standards applicable to scenic resources in the Vermont Town Plan or Windham Regional Plan, and the Project will not offend the sensibilities of the average person because it will have limited visibility and will appear to be an integral part of an existing industrial complex. Entergy VY has taken generally available mitigating steps to improve the harmony of the Project with its surroundings, including locating it within the existing industrial complex and using colors that blend in with existing structures.

Notwithstanding the above analysis, NEC asserts that Entergy VY has not presented sufficient evidence, arguing that the testimony of Mr. Dodson "leaves little to nothing upon

12. Docket 7082, Order of 4/26/06 at 51-52.

which the Board may rely.” In its brief and reply brief, NEC points to what it characterizes as errors in Mr. Dodson’s testimony “given the public consternation over waste siting and the reservation of natural vistas.” In particular, NEC challenges various statements indicating that the Project will be minimally visible.

We are not persuaded by NEC’s assertions. We understand that NEC has pointed to areas in which it disagrees with Mr. Dodson’s analysis and conclusions. However, even if we agreed with these observations, which we do not, the basic fact remains that the second ISFSI will be a relatively small component of a well-established industrial site. Due to existing screening, it will at most introduce a minor change to the characteristics of the site, but will not alter the nature of the views that the public are likely to have.

Historic Sites [30 V.S.A. § 248(b)(5) & 10 V.S.A. § 6086(a)(8)]

149. The Project will not be visible from the Governor Hunt House or Vernon Grange, which are located approximately 2,000 and 2,800 feet, respectively, from the Project. Dodson pf. at 24.

150. The Project will not be visible from any of the historic sites identified in the Hinsdale Town Plan. Dodson pf. 21, 24.

151. The Project will not result in an undue adverse impact to any historic sites because it will not be visible from those sites. Dodson pf. 24.

152. The Project will be located entirely within a previously disturbed industrial site and will therefore not require any review for archeological resources. Dodson pf. 24.

Rare & Irreplaceable Natural Areas and Necessary Wildlife Habitat & Endangered Species [10 V.S.A. § 6086(a)(8), (8)(A)]

153. The Project site is located within a previously disturbed industrial area and does not have any known occurrences of necessary wildlife habitat, rare, threatened, or endangered species, or significant natural communities. Goodell pf. at 12.

Development Affecting Public Investments [10 V.S.A. § 6086(a)(9)(K)]

154. The VY Station is the most significant quasi-public investment in the immediate area, and the Project will not jeopardize this investment. Goodell pf. at 13.

155. Other public or quasi-public investments in the general area are the New England Central Railroad, the Vernon hydroelectric station, the Vernon substation, and the Town of Vernon's roads. The Project is not in close proximity to these investments and will not unnecessarily or unreasonably endanger them. Goodell pf. at 13; Thomas pf. at 9.

156. The Project will have minimal impact, if any, on the Connecticut River. Goodell pf. at 13.

H. Consistency with Resource Selection/Integrated Resource Plans [30 V.S.A. § 248(b)(6)]

157. This criterion does not apply to Entergy VY because it does not distribute or transmit electricity to the public. Twomey pf. at 8.

I. Consistency with Electric Plan [30 V.S.A. § 248(b)(7)]

158. Vermont's Comprehensive Electric Plan does not take any position with respect to operation of the VY Station or SNF management; therefore the Project is not inconsistent with the Plan. Twomey pf. at 7.

159. Good cause to permit construction of the Project exists because it will eventually allow Entergy VY to decommission the VY Station and permit economically beneficial reuse of the site. Twomey pf. at 7-8.

J. Outstanding Resource Waters [30 V.S.A. § 248(b)(8)]

160. The Project is not located on any segment of waters designated as outstanding resource waters, and the Project will therefore not affect any outstanding resource waters. Goodell pf. at 13.

K. Waste to Energy Facilities [30 V.S.A. § 248(b)(9)]

161. The Project does not involve a waste-to-energy facility or a facility that produces electric energy using woody biomass. Twomey pf. at 9; Thomas pf. at 14.

L. Transmission [30 V.S.A. § 248(b)(10)]

162. The Project does not require any changes to the transmission facilities required for the VY Station. The Project will be served economically by the existing or planned transmission facilities without impact to Vermont utilities or customers because no changes to the transmission system are needed and the VY Station can be served by the existing distribution system on-site. Twomey pf. at 8-9; Thomas pf. at 14.

M. Adequate Financial Assurance [10 V.S.A. § 6522(b)(1)]

163. Adequate financial assurance exists for the management of SNF at the VY Station for a time period reasonably expected to be necessary, including through decommissioning, and for as long as it is located in the state. This finding is supported by findings 164 through 175, below.

164. Entergy VY estimates the cost of interim spent fuel storage (*i.e.*, until removal by DOE) to be approximately \$368 million. Twomey supp. pf. at 2; exh. EN-TMT-6.

165. Entergy VY plans to fund construction of the second ISFSI, procurement of dry storage systems, and transfer of the SNF (collectively expected to cost \$143 million) through two separate revolving credit facilities totaling approximately \$145 million. Twomey supp. pf. at 2; Twomey reb. pf. at 2; tr. 2/23/16 at 96, 100-101, 104-106 (Twomey).

166. The first facility is a committed credit facility with an expected duration of three years and a capacity of \$60 million. The second credit facility is an uncommitted facility with a capacity of \$85 million. Both credit facilities are guaranteed by Entergy Corporation, parent company of Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. Twomey supp. pf. at 3; exh. EN-TMT-6; tr. 2/23/16 at 98-99, 116 (Twomey).

167. The \$60 million committed facility includes a mechanism to increase the aggregate borrowing amount above its initial capacity. Exh. DPS-Cross-6 (Confidential); exh. DPS-Cross-3; tr. 2/23/16 at 132-133 (Twomey).

168. Entergy VY expects to repay the two credit facilities with funds recovered from DOE for its breach of contract. Twomey supp. pf. at 2-3; tr. 2/23/16 at 100-101, 104-106 (Twomey).

169. Operational costs for fuel pool management prior to removal of all SNF and ongoing ISFSI maintenance costs once the SNF is transferred to the ISFSI will be initially withdrawn from the Nuclear Decommissioning Trust. Twomey supp. pf. at 3; Recchia surreb. pf. at 3-4; exh. EN-TMT-6; tr. 2/23/16 at 101-102, 104, 121-124 (Twomey).

170. Entergy VY expects to recover the vast majority of SNF management costs from the DOE and estimates a 90% rate of recovery based on past trial experience. *See* tr. 2/23/16 at 1-3, 122-124 (Twomey).

171. Entergy VY has previously recovered from DOE approximately \$41 million for damages incurred through April 30, 2008, as a result of DOE's breach of its contract to remove SNF from the site, and Entergy VY is suing DOE on a regular basis to enforce its rights under DOE's standard contract. Twomey pf. at 9-10; tr. 2/23/16 at 89, 122 (Twomey).

172. To the extent that funds from the plant's Nuclear Decommissioning Trust are used to pay for SNF management costs, Entergy VY will deposit the proceeds from DOE recoveries of these costs into the Nuclear Decommissioning Trust or into a separate trust established for decommissioning, SNF management, and site restoration consistent with paragraph 11 of the Docket 7862 Settlement Agreement dated March 28, 2014. Twomey supp. pf. at 3-4; Recchia surreb. pf. at 4; tr. 2/23/16 at 101-103, 104-106, 112-113 (Twomey), 182-183 (Recchia).

173. Entergy VY submitted its plan to fund SNF management costs to the NRC as part of Entergy VY's Update to Irradiated Fuel Management Program, dated December 19, 2014. Twomey supp. pf. at 2:14-15; exh. EN-TMT-6.

174. The NRC approved Entergy VY's updated Irradiated Fuel Management Program on a preliminary basis on October 5, 2015. Tr. 2/23/16 at 98 (Twomey); Letter of Matthew S. Stern to Judith Whitney regarding responses to records requests, dated March 2, 2016.

175. The NRC's standards for evaluating the ability to cover SNF management costs do not take into account any recovery of costs from DOE. Twomey reb. pf. at 3.

Discussion

Section 6522(b)(1) of Title 10 requires that the Board find that Entergy VY has provided adequate financial assurances for the management of spent fuel. Entergy VY maintains that it meets this standard through a combination of three mechanisms: (1) Entergy VY's \$145 million in credit facilities, (2) Entergy VY's ability to recover spent fuel management costs from the DOE, and (3) the NRC's requirement that Entergy VY annually provide a report on the status of funding for spent fuel management activities. Further, Entergy VY asserts that NRC regulation of the radiological waste and decommissioning largely preempts Board jurisdiction, in particular preventing the Board from second-guessing the NRC's determination concerning the adequacy of the financial assurances for the Project.¹³

The Department also contends that Entergy VY has shown that adequate financial assurance exists for the management of the SNF at the VY Station for as long as the SNF remains in the state. According to the Department, Entergy VY's obligations under federal law will ensure that there will be adequate funds to manage the SNF. Moreover, the Department argues that once the SNF is in dry casks, the costs will actually decline relative to today. The Department states that it supports Entergy VY's use of the credit facilities to fund construction of the ISFSI and transfer of the SNF. The Department comments that it still has concerns about use of the Nuclear Decommissioning Trust, observing that it has challenged an NRC staff ruling allowing such use, but that the statutory criterion is met.

No other party commented on this issue.

Entergy VY has demonstrated that multiple layers of financial assurance are in place to cover the costs of SNF management for as long as the fuel is located in Vermont. The financing mechanisms cited by Entergy VY coupled with Entergy VY's continuing federal obligations, will ensure that sufficient funds are available.

13. Entergy VY concedes that the Board is not preempted in its determinations concerning site restoration, to the extent that the Board's authority is not used to, in effect, regulate other aspects of SNF management and radiological decommissioning.

N. Commitments to Remove All Spent Fuel [10 V.S.A. § 6522(b)(2)]

176. Entergy VY has committed through memoranda of understanding in Dockets 6545 and 7082 to “use its commercial best efforts to ensure that high-level SNF stored at the [VY] Station is removed from the site in a reasonable manner and as quickly as possible to an interim or permanent location outside of Vermont.” Twomey pf. at 13-14; Anthony Leshinskie, Department (“Leshinskie”) pf. at 2; exhs DPS-Cross-10, DPS-Cross-11, DPS-Cross-13 at ¶ 8.

177. Entergy VY’s commitments remain in full force and apply to all spent fuel stored at the VY Station. Twomey pf. at 13.

O. Spent Fuel Management Plan [10 V.S.A. § 6522(b)(3)]

178. Entergy VY has a Spent Fuel Management Plan in place. Twomey pf. at 14; exh. EN-GT-3.

179. The Spent Fuel Management Plan includes a plan for moving SNF from the spent fuel pool to dry cask storage. Entergy VY will start loading casks and moving them to the existing ISFSI pad beginning in 2017. Transfer from the spent fuel pool to dry cask storage is expected to be complete by the end of 2020. Thomas reb. pf. at 3; exh. EN-GT-3; tr. 2/23/16 at 8 (Thomas); Leshinskie pf. at 2.

180. Entergy VY certified on January 12, 2015, that all fuel was removed from the reactor vessel (and placed in the spent fuel pool). Leshinskie pf. at 2.

181. The Spent Fuel Management Plan also includes procedures for long-term storage of SNF at the station. In accordance with the Board’s order in Docket 7082, the plan addresses the possibility that SNF could remain at the VY Station through 2082. Exh. EN-GT-3 at 5.

182. In the absence of an approved federal long-term spent fuel storage facility, Entergy VY’s spent fuel management plan supports a commitment to remove all irradiated SNF from the VY Station in an efficient and timely manner. Leshinski pf. at 2.

183. The Spent Fuel Management Plan includes transfer and closure procedures for the eventual removal of SNF to an off-site facility. Exh. EN-GT-3.

P. Compliance with Memoranda of Understanding [10 V.S.A. § 6522(b)(4)]

184. Entergy VY is in substantial compliance with all MOUs entered into with the State, including those in Dockets 6545, 6812, 7082 and 7862. Twomey pf. at 14-16; tr. 2/23/16 at 113-114 (Twomey); exhs. DPS-Cross-10-13.

VII. CONCLUSION

For the reasons we have set out above, we conclude that the Project will have no undue adverse effects upon the environment and, subject to the conditions to which Entergy VY agreed in the Stipulation and those imposed by this Order, meets all of the criteria established by 30 V.S.A. § 248 as well as the specific criteria for SNF storage established by 10 V.S.A. § 6522. Construction of a second ISFSI storage pad as expeditiously as possible to enable transfer of all of the VY Station's SNF to dry storage and installation of a backup generator will promote the general good of the State.

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

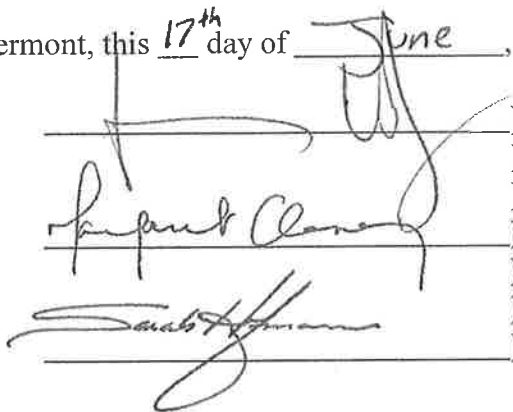
1. The construction of a dry fuel storage facility and a 200-kW diesel generator and ancillary facilities at the Vermont Yankee Nuclear Power Station by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. ("Entergy VY"), as proposed in Entergy VY's petition and supporting testimony and exhibits, will, subject to the conditions set out in this Order, promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248. It also meets the requirements of 10 V.S.A. § 6522 for storing SNF. Accordingly, we issue a Certificate of Public Good to that effect.

2. Entergy VY shall comply with the conditions set forth in paragraph 3 of the Stipulation Between Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. and the Vermont Agency of Natural Resources, dated as of the 18th day of February, 2016.

3. The Certificate of Public Good hereby issued shall apply to the Vermont Yankee Nuclear Power Station, regardless of the owner of the facilities, and the conditions of the Certificate of Public Good and the requirements of this Order shall apply to any future owner.

4. Entergy VY is authorized to store only spent nuclear fuel that is derived from the operation of VY Station. Entergy VY may not store spent nuclear fuel derived from any other source.

Dated at Montpelier, Vermont, this 17th day of June, 2016.

The block contains three handwritten signatures, each written over a horizontal line. The signatures are in dark ink and appear to be cursive. The first signature is at the top, the second in the middle, and the third at the bottom.

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: June 17, 2016

ATTEST: [Signature]
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8300

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)

Entered: 6/17/2016

CERTIFICATE OF PUBLIC GOOD ISSUED
PURSUANT TO 30 V.S.A. SECTION 248
AND 10 V.S.A. SECTION 6522

IT IS HEREBY CERTIFIED that the Vermont Public Service Board ("Board") this day found and adjudged that the construction of a dry fuel storage facility and a 200-kW diesel generator and ancillary facilities at the Vermont Yankee Nuclear Power Station by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. ("Entergy VY"), as proposed in Entergy VY's petition and supporting testimony and exhibits, will promote the general good of the State, subject to the following conditions:

1. Construction, operation, and maintenance of the Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or substantial change to the Project must be approved by the Board. Failure to obtain advance approval from the Board for a material deviation from the approved plans or a substantial change to the Project may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.

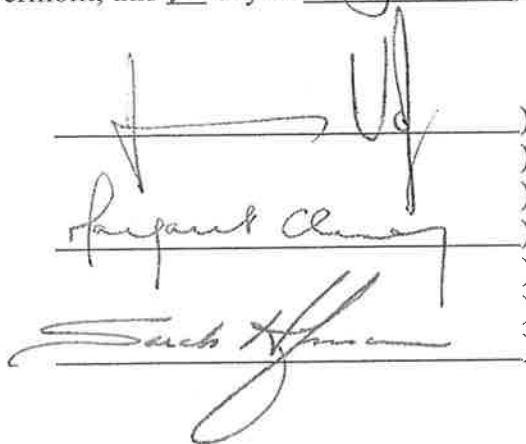
2. Prior to commencing site preparation or construction, Entergy VY shall obtain all necessary permits and approvals. Construction, operation, and maintenance of the Project shall be in accordance with such permits and approvals, and with all other applicable regulations, including those of the Vermont Agency of Natural Resources ("ANR").

3. Entergy VY shall comply with the conditions set forth in paragraph 3 of the Stipulation Between Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. and ANR, dated as of the 18th day of February, 2016.

4. The Certificate of Public Good hereby issued shall apply to the Vermont Yankee Nuclear Power Station, regardless of the owner of the facilities, and the conditions of the Certificate of Public Good and the requirements of this Order shall apply to any future owner.

5. Entergy VY is authorized to store only spent nuclear fuel that is derived from the operation of VY Station. Entergy VY may not store spent nuclear fuel derived from any other source.

Dated at Montpelier, Vermont, this 17th day of June, 2016.



PUBLIC SERVICE

BOARD

OF VERMONT

OFFICE OF THE CLERK

FILED: June 17, 2016ATTEST: Holly Arden
Deputy Clerk of the Board

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Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.