

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 17-3276-PET

Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for an amendment to the certificate of public good issued in Docket 8300 to authorize modifications to the security fence at the Vermont Yankee Nuclear Power Station	
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Order entered: 08/31/2017

ORDER GRANTING CPG AMENDMENT

I. INTRODUCTION

On June 17, 2016, the Vermont Public Utility Commission (the “Commission”)¹ issued an Order and Certificate of Public Good (“CPG”) in Docket 8300 authorizing the construction and installation of a second independent spent fuel storage installation (“ISFSI”) and other associated work at the Vermont Yankee Nuclear Power Station in Vernon, Vermont (the “VY Station”). In this Order, the Commission grants a request for an amendment to the CPG issued to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (collectively, “Entergy VY”) that authorizes certain modifications to the security fence and other changes to the plans approved in Docket 8300 (the “Project”).

II. PROCEDURAL HISTORY

On May 9, 2017, Entergy VY filed a petition requesting that the Commission approve an amendment to the Docket 8300 CPG to authorize the relocation of the security fence surrounding the ISFSI, along with the installation of other related facilities.

On June 8, 2017, the New England Coalition on Nuclear Pollution (“NEC”) filed a motion requesting a hearing on Entergy VY’s request for an amendment.

On June 9, 2017, the Commission issued an Order establishing a June 29, 2017, deadline for parties to file comments identifying any significant issues with respect to the substantive

¹ Pursuant to Section 9 of Act 53 of the 2017 legislative session, the Vermont Public Service Board’s name was changed to the Vermont Public Utility Commission, effective July 1, 2017. For clarity, activities of the Vermont Public Service Board that occurred before the name change will be referred to in Commission documents as activities of the Commission unless that would be confusing in the specific context.

criteria of 30 V.S.A. § 248 and requests for hearing. Copies of this Order were provided to all parties in Docket 8300.

On June 29, 2017, the Vermont Department of Public Service (the “Department”) and the Vermont Agency of Natural Resources (“ANR”) filed joint comments on Entergy VY’s petition.

Also on June 29, 2017, Entergy VY filed a response to NEC’s June 8 motion.

On July 17, 2017, NEC filed a reply to Entergy VY’s June 29 filing.

On July 21, 2017, Entergy VY filed a response to NEC’s July 17 filing.

No further comments on Entergy VY’s petition were filed with the Commission.

III. FINDINGS

The findings below address only the substantive criteria of Section 248 that are implicated by Entergy VY’s petition.

Project Description

1. The VY Station is presently surrounded by an existing security fence pursuant to Nuclear Regulatory Commission (“NRC”) regulations. Entergy VY proposes to relocate the security fence to the immediate area surrounding the ISFSI storage pads. George Thomas, Entergy VY (“Thomas”) pf. at 2.

2. The proposed modifications include the following components: (1) a new vehicle barrier at the outer perimeter of the new fenceline; (2) inner and outer fences immediately surrounding the ISFSI pads; (3) a paved isolation zone between the two fences; (4) security lighting, cameras, and intrusion-detection equipment; and (5) a new Central Alarm Station building (“CAS Building”). Thomas pf. at 2; exh. GT-1.

3. The Project will reduce the size of the existing fenced area for the VY Station from approximately 10.5 acres to around 1.3 acres.² The smaller protected area will allow Entergy VY to reduce security costs that would otherwise be drawn from the Nuclear Decommissioning Trust (“NDT”). Projected savings from the proposed modifications result in a reduction in withdrawals from the NDT of approximately \$1.2 million per month. Thomas pf. at 2; exh. GT-1.

² This area is generally referred to as the “protected area.”

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

4. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. The Project will facilitate the orderly and timely decommissioning of the VY Station, which is in keeping with town and regional planning goals. Exh. HLD-1.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

5. The Project will result in reduced withdrawals from the NDT, principally due to a reduction in number of personnel needed to monitor and maintain the smaller protected area. Exh. GT-1.

6. In addition to the savings to the NDT, the Project will facilitate decommissioning activities by simplifying access to the areas of the VY Station that no longer require protection. Exh. GT-1.

Discussion

In its comments, NEC suggests that the Project may not have a positive economic benefit because the savings will result in fewer personnel being employed at the VY Station. While this is true, these costs will result in direct savings to the NDT, furthering the prospect of speedy decommissioning of the site. Moreover, to the extent that the reduced costs may result in the NDT having excess funds after decommissioning of the VY Station, under the Commission's Order in *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station*, Docket 6545, all excess funds in the NDT must be returned to ratepayers.³ Combined with the simplification

³ Order of 6/13/02 at 5, 164.

of decommissioning activities resulting from the Project, we find that the overall economic benefit of the Project will clearly outweigh any negative economic effect identified by NEC.

**Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment,
the Use of Natural Resources, and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

7. Subject to the conditions described below, the Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, or 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), and greenhouse gas impacts. This finding is supported by findings 8 through 35, below, which give due consideration to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

Air Pollution and Greenhouse Gas Impacts

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

8. The Project will not result in undue air pollution, sound, or greenhouse gas emissions. This finding is supported by findings 9 through 11, below.

9. Air pollution impacts from the Project will be limited to those associated with construction activities, including the emission of fossil fuels from construction vehicles and dust. Entergy VY will minimize these impacts during the construction process. Exh. JEG-1.

10. The new CAS Building will be heated and cooled by a high-efficiency air-source heat pump, and therefore will not create direct fossil-fuel emissions. Exh. JEG-1.

11. Noise impacts from the Project will be principally limited to construction activities. These will be similar to, or less than, previous construction activities at the VY Station. Once the Project is completed, additional sound impacts will be limited to those from the heat pump installed on the CAS Building. Exh. JEG-1.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

12. The Project will not result in undue water pollution. This finding is supported by findings 13 and 14, and 15 through 25, below.

13. Stormwater runoff resulting from construction activities will be managed in accordance with ANR's Low-Risk Site Handbook for Erosion Prevention and Sediment Control, and the requirements of necessary Vermont Department of Environmental Conservation ("DEC") permits. Exh. JEG-1.

14. The Project will result in the creation of approximately 0.30 acres of new impervious surface on the VY Station site and will require an amendment to the station's existing stormwater permit. Exh. JEG-1.

Discussion

ANR notes that the Project has the potential to have adverse effects with respect to stormwater, and requests the inclusion of a condition requiring Entergy VY to receive a construction stormwater permit for the Project and to amend its existing stormwater individual permit. We find that ANR's requested condition is reasonable and therefore adopt the following as a condition of Entergy VY's amended CPG:

Prior to commencing construction of the Project, Entergy VY shall obtain coverage under a construction general permit issued by ANR, and shall obtain an amendment to its existing stormwater individual permit #4213-INDS.A.1 to reflect impacts from the Project.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

15. The Petitioner represents that the Project will meet all applicable health and DEC regulations regarding the disposal of wastes and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. This finding is supported by findings 16 and 17, below.

16. Based on its experience on the Project site, Entergy VY does not anticipate that any excavated soil will be contaminated with radiation. If contaminated soils are encountered they will be segregated and handled pursuant to applicable NRC regulations. Exh. JEG-1.

17. The CAS Building will include a bathroom, which will connect to the existing wastewater disposal systems on the VY Station site. Exh. JEG-1.

Sufficiency of Water Supply

[10 V.S.A. § 6086(a)(3) and (4)]

18. The Project will have sufficient water available for the foreseeable needs of the development, and will not cause an unreasonable burden on an existing water supply. This finding is supported by findings 19 and 20, below.

19. The bathroom in the CAS Building will have low-flow plumbing fixtures. Overall, the Project is not expected to result in an increase in water usage at the VY Station. Exh. JEG-1.

20. The Project will require a new service connection to the existing water system serving the VY Station. The existing drilled well on the site has ample capacity for the Project's water needs, during both construction and operation.

Discussion

In its comments, ANR observes that the new service connection to serve the CAS Building will require Entergy VY to obtain a permit under the Vermont Water Supply Rule. ANR therefore requests that the Commission include a condition in the Project's CPG requiring Entergy VY to obtain such a permit prior to construction. We find that ANR's requested condition is reasonable and adopt the following as a condition of Entergy VY's amended CPG:

Prior to commencing construction of the Project, Entergy VY shall obtain from ANR a permit to construct the modification of the existing public non-transient non-community water system known as the Vermont Yankee Plant Main Water System (WSID VT0008332).

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

21. The Project is not located within a floodway or floodway fringe and therefore will not restrict or divert the flow of flood waters, significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Exh. JEG-1.

Discussion

Although the Project is not located in a floodway or floodway fringe, ANR notes that the Project is within the Connecticut River corridor and subject to the provisions of ANR's Flood Hazard and River Corridor Rule, which seeks to limit flood-related erosion hazards. ANR

therefore requests that the Commission include a condition in any CPG issued for the Project requiring Entergy VY to obtain a state floodplain permit. We find that ANR's requested condition is reasonable and therefore adopt the following as a condition of Entergy VY's amended CPG:

Prior to commencing construction of the Project, Entergy VY shall obtain a state floodplain permit from ANR.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

22. The Project will not have an undue adverse effect on streams because there are no streams in the Project area. The closest stream is located approximately 375 feet north of the Project boundary and will not be affected by the Project.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

23. The Project does not involve construction on the immediate shoreline of the Connecticut River. The new fenceline will be located more than 130 feet from the mean high water mark of the river and the closest Project element – the concrete vehicle barrier – will be set back approximately 20 feet from the river. Exh. JEG-1.

24. No fill will be placed on the river bank and there will be no ground disturbance outside the existing fenceline of the VY Station. The Project will not alter the natural condition of the waters or lands adjacent to the Connecticut River beyond the extensive development already present. Exh. JEG-1.

25. The Project will not affect public access to the Connecticut River because public access in this area is already prohibited due to security and safety reasons associated with the VY Station. Exh. JEG-1.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

26. The Project will not cause unreasonable soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition may result. As discussed in findings 13 and 14, above, Entergy VY will implement measures to prevent the creation of stormwater pollution. Exh. JEG-1.

Transportation

[10 V.S.A. § 6086(a)(5)]

27. The Project will not cause unreasonable traffic or congestion because there will be only a small increase in traffic for a short duration during construction, and no transportation-related permits are needed for the delivery of equipment or materials. Exh. JEG-1.

Aesthetics, Historic Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

28. The Project will not have an undue adverse impact on aesthetics or on the scenic or natural beauty of the area, nor will the Project have an undue adverse effect on historic sites or rare and irreplaceable natural areas. This finding is supported by findings 29 through 32, below.

Aesthetics

29. At present, the broader Project site consists of the numerous industrial components of the VY Station. The majority of these facilities will remain present until decommissioned pursuant to the VY Station's decommissioning plan. Exh. HLD-1.

30. The VY Station is presently surrounded by an existing security fence and associated protective barriers. When compared with the existing security structures, the Project will result in a substantial reduction in the visible security infrastructure. Exh. HLD-1.

31. The largest element of the Project – the CAS Building – will be visible from distances approximately one mile away to the east and northeast, while smaller Project components will only be visible approximately one half mile from the site. Project elements will also be visible from Hinsdale, New Hampshire across the Connecticut River, and from portions of the river itself. However, these elements will occur in the broader context of the VY Station site and the existing ISFSI. Exh. HLD-1.

Discussion

Given the fact that the Project will result in a substantial reduction in the total security infrastructure visible on the VY Station site, and that the new visible infrastructure will occur in the context of the VY Station and the existing ISFSI, we do not find the Project will have an undue adverse aesthetic effect.

In its comments, NEC observes that if this Commission and the NRC approve certain transactions that are now pending, the VY Station may be decommissioned earlier than

previously anticipated. NEC asserts that this change (*i.e.*, removal of most of the structures at the VY Station) would alter the broader context for the Project. Thus, NEC does not argue that the Project at present would have an adverse aesthetic affect, only that the Project might have a different aesthetic impact if viewed in the context of a restored site. As discussed further below, this outcome remains at most an undefined possibility, and one that is unlikely to occur for a number of years, best addressed in the Commission's review of those transactions.

Even in the event that the other elements of the VY Station are decommissioned in the near-term, some facilities associated with the station can be expected to remain on the site for an extended period of time. These include the ISFSI and the electric transmission infrastructure located to the northwest. In this context, the previously-approved ISFSI itself, rather than the fence, CAS Building, and other associated security measures at issue here, would remain the dominant visual feature of the site.

Historic Sites

32. The Project will not have an undue adverse effect on historic properties. The Project will not be visible from any historic sites. Exh. HLD-1.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

33. The Project will not have an undue adverse effect on any endangered species or critical wildlife habitat. This finding is supported by findings 34 and 35, below.

34. The only rare, threatened, or endangered species identified in the immediate Project area are the peregrine falcons that nest on the existing stack of the VY Station. This species will not be affected by the Project. Exh. JEG-1.

35. There is no necessary wildlife habitat located on the Project site.

IV. DISCUSSION

NEC requests an evidentiary hearing in this case. It presents several arguments in its filings to support its request for a hearing that are addressed below.

NEC argues that the petition is largely a new proposal involving the construction of new security structures and may not be subject to Commission Rule 5.408, which governs amendments to previously approved Section 248 projects. In arguing that it may not be appropriate to regard the proposal as an amendment to the CPG issued in Docket 8300, NEC suggests that the proposal may require a separate Section 248 petition under applicable law.

It is not obvious from NEC's comments why NEC believes that the Commission should treat Entergy VY's proposal as a new Section 248 proceeding rather than an amendment to the existing CPG. In Docket 8300, the Commission issued a CPG for Entergy VY authorizing the construction of a second ISFSI storage pad and a 200 kW diesel generator at the VY Station. In the present petition, Entergy VY proposes to modify the current security facilities that are part of a high-security protected area encompassing the ISFSI storage pads. The testimony and exhibits demonstrate that Entergy VY proposes to alter the existing certificated facility.

In the context of the specific changes proposed by Entergy VY, the Commission concludes that the appropriate procedural mechanism for reviewing this proposal is Rule 5.408, which provides for amendments to existing CPGs. Commission Rule 5.408 provides as follows:

An amendment to a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal. For the purpose of this subsection, a substantial change is a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).

Here, the construction of the new security facilities constitutes a substantial change to the second ISFSI approved in Docket 8300. This change also has the potential for significant impact with respect to applicable Section 248(b) criteria. Thus, the requirements of Rule 5.408 are met and it is appropriate to treat Entergy VY's petition as an amendment.

NEC also asserts that the Commission needs to hold an evidentiary hearing in this matter. The purpose of the hearing would be to consider whether any potential significant impacts are "undue" impacts. In contrast, Entergy VY argues that the actual impact of the project under applicable criteria will be minimal.

In its Order of June 9, 2017, the Commission solicited comments on whether the amendment request "raises a significant issue with respect to any of the substantive criteria of 30

V.S.A. § 248.” As indicated in that Order, the Commission assesses the need for an evidentiary hearing related to Rule 5.408 amendment requests based on whether the petition raises a significant issue under applicable Section 248 criteria. Such an assessment is made by the Commission based on the filings made by the petitioner and the comments on the petition submitted by other parties and interested persons.

The Department concluded that the Project would not raise a significant issue under any of the criteria reviewed by it (including, orderly development, economic benefit, aesthetics, historic sites, and noise). ANR concluded that the proposed project does not raise a significant issue with respect to the natural resource criteria of Section 248(b) so long as Entergy obtains required ANR permits.

NEC contends that the Project “may exacerbate visual, planning, and site reuse impacts,” disputes the economic benefits of the Project (noting the possible offsetting effect of a reduction in security staff), and suggests the Project might have an unspecified impact on the historic resources of indigenous peoples. However, NEC’s filings consists largely of unsupported, general, or speculative claims accompanied by little specific information or analysis of applicable criteria. These highly generalized concerns fail to raise a significant issue under any of the Section 248(b) criteria. Thus, in the absence of any significant issues, the Commission concludes that a hearing is not necessary. In reaching this conclusion, we do not find that NEC must demonstrate that Entergy VY has failed to meet one or more criteria. Our ruling is more limited; NEC has not presented any factual allegations that identify a significant issue.

NEC argues that the aesthetic impact of the proposed security facilities should be seen for purposes of this case in the context of the proceeding in Case 8880, in which the Commission will consider, among other things, the possibility of the restoration of the VY Station site within the next 10 to 15 years. NEC notes that the character of this industrial site may change, as it is possible by 2030 that only the VELCO transmission station and the ISFSI storage pads will remain on or near the site, which would heighten the adverse aesthetic impact of the security facilities proposed in this case. Thus, NEC argues that the Commission must evaluate the proposal based upon the assumption that the ISFSI and security fence will not be located on a major industrial site.

At this time, the Commission concludes that the proper context for review is the present state of the VY Station site. The early restoration of the VY Station site remains speculative and premature as it presumes approvals and outcomes in Case 8880 that are still to be determined. Moreover, NEC cites no authority for the proposition that an aesthetics analysis should be based not upon the present context, but instead using some future, uncertain state. The issues NEC raises concerning the aesthetic impact of the security facilities following site restoration are more properly raised in Case 8880 or in another future proceeding. To the extent such security facilities might have an undue adverse aesthetic impact following site restoration, NEC or other parties could seek future structure modification or mitigation measures consistent with NRC visibility requirements and other applicable federal and state public safety criteria.

V. CONCLUSION

Based upon all of the above evidence, we conclude that the Project will promote the general good of the State of Vermont, and does not raise a significant issue with respect to the substantive criteria of Sections 248. Accordingly, we grant Entergy VY's request for an amended CPG, subject to the conditions discussed in this Order.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission ("Commission") that:

1. The modifications to the security fence and associated infrastructure (the "Project") proposed by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (collectively, "Entergy VY") will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 248, and an amendment to the certificate of public good issued in Docket 8300 to that effect shall be issued in this matter pursuant to 30 V.S.A. § 248 and Commission Rule 5.408.
2. Construction, operation and maintenance of the Project shall be in accordance with the plans and evidence submitted in this proceeding. Any material deviation from these plans or substantial change to the Project must be approved by the Commission. Failure to obtain advance approval from the Commission for a material deviation from the approved plans or

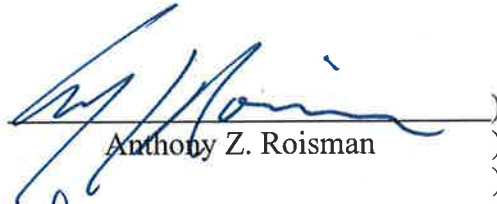

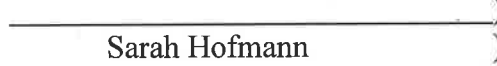
substantial change to the Project may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.

3. Prior to commencing construction of the Project, Entergy VY shall obtain coverage under a construction general permit issued by the Agency of Natural Resources (“ANR”), and shall obtain an amendment to its existing stormwater individual permit #4213-INDS.A.1 to reflect impacts from the Project.

4. Prior to commencing construction of the Project, Entergy VY shall obtain from ANR a permit to construct the modification of the existing public non-transient non-community water system known as the Vermont Yankee Plant Main Water System (WSID VT0008332).

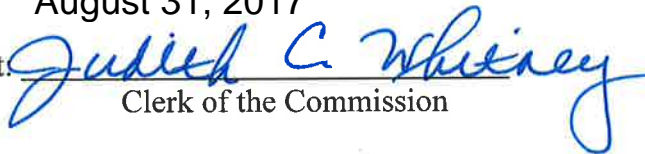
5. Prior to commencing construction of the Project, Entergy VY shall obtain a state floodplain permit from ANR.

Dated at Montpelier, Vermont, this 31st day of August, 2017

)	
Anthony Z. Roisman)	PUBLIC UTILITY
)	
)	COMMISSION
Margaret Cheney)	
)	OF VERMONT
)	
)	
Sarah Hofmann)	

OFFICE OF THE CLERK

Filed: August 31, 2017

Attest: 
 Clerk of the Commission

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

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

PSB Case No. 17-3276-PET - SERVICE LIST

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