

STATE OF VERMONT  
PUBLIC SERVICE BOARD

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

October 29, 2015  
Docket No. 8300

**NEW ENGLAND COALITION'S REQUEST FOR LEAVE TO FILE A RESPONSE TO  
ENERGY VY'S REPLY IN SUPPORT OF ITS OBJECTIONS TO ADMISSION OF  
PREFILED TESTIMONY OF RAYMOND SHADIS.**

New England Coalition ("NEC"), by and through its Pro Se Representative, Clay Turnbull, respectfully requests leave to respond to Entergy VY's Reply in Support of its Objections to Admission of Prefiled Testimony of Raymond Shadis. Said "Reply" was filed by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, "ENVY") on October 15, 2015. NEC makes this request because the rules do not contemplate a second response and yet there is no way that NEC could have anticipated or foreseen the spurious content of ENVY's "Reply in Support of its Objections..." ENVY's Reply contorts and misstates the testimony of NEC's witness and indulges in libelous accusations against NEC that go far beyond a professional, dispassionate and honest attempt to refute NEC's presentation and defense of the testimony of its witness. In its initial objection, ENVY made no claim as to the materiality of Mr. Shadis' testimony but now seeks to turn the rules on end by arguing that somehow materiality determines relevance. As a matter of simple fairness, fairness to which NEC now appeals, NEC must now be accorded an opportunity to defend

itself and its witness against ENVY's unwarranted and unforeseeable attacks. In anticipation of the Vermont Public Service Board's favorable consideration, NEC attaches hereto its Response to Entergy VY's Reply In Support Of Its Objections To Admission Of Prefiled Testimony Of Raymond Shadis.

Respectfully Submitted  
on Behalf of New England Coalition  
This 29th Day of October, 2015,



Clay Turnbull  
Pro Se representative  
New England Coalition

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New England Coalition ("NEC"), by and through its Pro Se Representative, Clay Turnbull, herein provides its Response to Entergy VY's Reply in Support of its Objections to Admission of Prefiled Testimony of Raymond Shadis. In its "Reply" Entergy Nuclear Vermont Yankee ("ENVY") effectively doubles down on the misrepresentations of fact and law laced throughout its initial "Objections." It asserts that NEC's witness has no experience or credentials that would permit him to testify on issues of aesthetics. Worse, it repeats the libel that NEC's "real" concern in this matter, despite the "pretext" under which it intervened, is nuclear safety, and therefore preempted and somehow depriving NEC of any qualification to intervene. NEC briefly responds to ENVY's spurious allegations *seriatim* in the following discussion.

## DISCUSSION

ENVY opens with, "Mr. Shadis' testimony complains about process and the extent of public involvement in nuclear regulation and policy making." Not so, NEC's witness "complains" about nothing, rather he openly praises an alternative licensee approach to "meaningful public participation" as a means giving the public reason to have a more positive view of the licensee's undertakings; thus mitigating potential negative impacts on aesthetics, site reuse, regional planning and Section 248 criteria generally.

ENVY next states, "NEC now claims that this testimony is germane to the issue of aesthetics...but the connection is fictitious." Not so, NEC's witness drew the connection in his prefiled testimony Mr. Shadis' testimony specifically refers to aesthetics considerations in several instances.

Mr. Shadis speaks of the Calvert Cliffs ISFSI site as being "set in a wooded area, tucked down into a kind of natural amphitheater."(Shadis page 7 line 10 )

He speaks of one of the improvements at Maine Yankee obtained through the participation of the Community Advisory Panel: "the planting of a visual screen of Eastern White pine..." (Shadis page 8 line 10)

He further mentions (at Maine Yankee), "an earthen berm that casts the storage units into low silhouette," another ISFSI improvement obtained through the participation of members of the public. (Shadis page 8 line 8)

Mr. Shadis goes on to say that meaningful participation has the potential to lead to better outcomes (for all applicable criteria).

**Q 7. Please explain your Maine Yankee ISFSI experience especially as it relates to licensee attitudes and policy regarding public participation. ...**

A 7. First, let me say why I think public participation, meaningful public participation, is important. It is important because public participation has the potential to lead to better

outcomes. In matters affecting communities and the environment, the National Environmental Policy Act as interpreted by NRC, requires meaningful public consultation. Public participation serves to increase public confidence in the licensee and regulatory agencies. [Emphasis added]

NEC does not just "now" make the connection. In the Summary or preamble to Mr. Shadis' testimony, NEC states,

This testimony is intended to compare Maine Yankee Atomic Power Company's approach to establishing an ISFSI to that of Entergy Nuclear Vermont Yankee in order to provide additional context in which to examine the above-captioned petition. Maine Yankee's course of public involvement and stakeholder consultation in ISFSI planning and construction was profoundly different than that so far exhibited by Entergy Nuclear Vermont Yankee. In the case of Maine Yankee, public and stakeholder input served to mitigate negative impacts on the local environment, the reuse of the Vermont [sic, Maine] Yankee property, regional planning and development, and aesthetics, which are the permissible review-criteria listed in the Vermont Public Service Board's Order of July 7, 2015, granting intervention to New England Coalition.

NEC's witness, having seen the point made in the summary, rightly considered it made and any detailed repetition to be gratuitous. Nonetheless, in A-7 (above), NEC's witness captures the overall mitigating benefits of meaningful public participation.

Further, to aid in understanding this connection, NEC, in its first Response, quoted from the Board's Order of August 17, 2011, Docket 7373, wherein the Board approved Vermont Electric Company's consultation on the aesthetic effects of a revised landscape mitigation plan at Vermont Yankee power plant site with Vernon town officials and abutting property owners. It is relevant to this docket, in which both state and federal interests border a thin line of preemption, that the approved landscape mitigation plan was necessitated by a U.S. Nuclear Regulatory Commission requiring elimination of certain on-site screening foliage.

In a footnote on Page 3 of its "Reply" ENVY says,

Mr. Shadis has not demonstrated any knowledge, skill, education, training, or experience sufficient to qualify him as an expert in the area [aesthetics].

ENVY ignores three important facts:

1. Mr. Shadis testifies only to his experience and what logically flows from that experience; not to the art or practice of aesthetic determinations.

2. Mr. Shadis has expertise, training, and experience in aesthetics. In several preceding dockets Entergy has attempted to impeach the worth of Mr. Shadis' testimony on nuclear and technical matters by pointing to Mr. Shadis' university bachelor's degree in art. Mr. Shadis' experience includes more than ten years experience as a state certified art instructor (practice and theory or aesthetics) in Texas, West Virginia, and Maine. Mr. Shadis has more than 50 years experience as a professional artist that includes numerous spatial design commissions.

3. Even if Mr. Shadis' testimony were limited only to aesthetics, and it is not, it should be noted that the *Quechee* aesthetic test references the impressions of an ordinary person and not the speculations or constructions of an expert.

Finally, ENVY accuses NEC of "...attempting to conceal its concerns about safety and the fact that NEC does not want to have spent nuclear fuel stored in Vermont into, it claims, the 22nd Century by calling it an "aesthetic" issue." Following on a similar charge leveled at NEC in ENVY's Objections, that NEC was engaged in a "pretext" for what were really preempted concerns, ENVY effectively doubles down on a falsehood and one that it must surely know to be false.

ENVY was a party to Docket 6976 concerning a proposed Vermont Yankee parking lot and fence line modifications wherein NEC was admitted strictly on aesthetic and alternatives analysis grounds. Order entered: 9/9/2004

NEC has demonstrated an interest, albeit limited, in this proceeding and is in a position to provide this Board with valuable perspectives on the alternatives for, and the aesthetic impacts of, the Outage Parking Area. Therefore, we grant permissive intervention<sup>2</sup> to NEC, limited solely to the following two issues:

- the analysis of alternatives for the spaces only used periodically (the "Outage Parking Area," also referred to in Entergy VY's petition as the 556-space "North Overflow Parking" area in Exhibit Entergy-1), and the aesthetic impacts of the Outage Parking Area.
- In arriving at this decision, the Board weighed the significance of each of NEC's seven potential issues with respect to the substantive criteria of 30 V.S.A. § 248 and whether NEC demonstrated a substantial interest which may be affected by the outcome of the proceeding... The Board further determined that NEC and its members, being local to the site of the Vermont Yankee Nuclear Power Plant in Vernon, VT, have demonstrated a substantial interest in the aesthetic impacts of the Project, would be helpful to the Board in evaluating the adequacy of the alternative parking area evaluated by Entergy VY in its petition, and that no existing parties adequately protect these interests.

ENVY appears to be now proposing that NEC has been duping the Board as to NEC's real intentions for more than close to a decade. As the Board and all parties are surely aware NEC makes no effort to hide that it is a nuclear safety and public health and environmental advocate of long standing (since 1971). And NEC knows where to litigate those issues; it is not before this tribunal. NEC has litigated nuclear safety issues before the U.S. Nuclear Regulatory Commission and in the Federal Courts more than any other advocacy organization in New England. NEC was the sole citizen's organization intervenor in both the Vermont Yankee uprate and license renewal proceedings before NRC. ENVY knows this, yet is accusing NEC of perjuring itself before this body with pretexts in order to "hide" its "real" concerns. This is unconscionable and should bring the Board's sanctions as surely it exceeds the seriousness of ENVY behavior in Docket 6812, which the Board termed, "bullying and corrosive."

ENVY has already through its overly selective and partial quotations signified a "willingness to be less than forthright with this Board".

Entergy's selective quotation suggests a willingness to be less than forthright with this Board." Order entered: 6/13/2003

CONCLUSION

For all of the foregoing good reasons, the testimony of Raymond Shadis should be admitted. For its duplicitous representations to the Board and for its unwarranted and unsupportable attacks on the integrity of another party, the Board should now severely sanction ENVY.

Respectfully Submitted  
on Behalf of New England Coalition  
This 29<sup>th</sup> Day of October, 2015,



Clay Turnbull  
Pro Se representative  
New England Coalition