

June 29, 2017

Nancy S. Malmquist
nmalmquist@drm.com

Via Federal Express and ePSB

Mrs. Judith C. Whitney
Clerk of the Board
Vermont Public Service Board
Peoples United Bank Building
112 State Street
Montpelier, VT 05620-2701

Re: Case No. 17-3276-PET: Response to June 9, 2017 Order Establishing Comment Deadline and June 8, 2017 letter from the New England Coalition on Nuclear Pollution

Dear Mrs. Whitney:

We write on behalf of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively “Entergy VY”) in response to the Board’s June 9, 2017 Order Establishing Comment Deadline in the above-captioned action (the “Order”) and the June 8, 2017 letter from the New England Coalition on Nuclear Pollution (“NEC”).

The Board issued a Certificate of Public Good to Entergy VY on June 17, 2016 in Docket 8300 (the “CPG”), authorizing the construction of a second ISFSI pad and a diesel generator at the Vermont Yankee Nuclear Power Station (“VY Station”). Entergy VY filed a request dated May 8, 2017 for amendment to the CPG (the “Request for Amendment”) that would allow the proposed security modification project (the “Project”) to reduce the size of the Protected Area at the VY Station. The Board’s Order provides a June 29, 2017 deadline for comments on the Request for Amendment and for any requests for a hearing. NEC requested a hearing in its June 8, 2017 letter and has had the opportunity to file comments. Because the Project is time-sensitive Entergy VY is asking the Board to act in accordance with its usual practice – which is to seek comments on CPG amendment requests – and issue its ruling on the Request for Amendment by August 31, 2017.

I. Proposed Procedure for Deciding Entergy VY’s Request for Amendment

We believe any further procedural steps would be unnecessary and could delay the Project’s implementation, leading to avoidable costs of \$1.2 million per month for the Nuclear Decommissioning Trust, as described in the Request for Amendment (Memorandum of George Thomas at 5-6). The Board has regularly reviewed amendment requests and requests for approval of plan changes and modifications, as well as petitions requesting approval for electric generation or transmission facilities of limited size and scope, without hearings or other

proceedings other than giving non-petitioners an opportunity to comment on the amendment request and petitioners an opportunity to respond to questions of the Board. There is no reason to treat the request of Entergy VY any differently.

We believe a hearing on the Request for Amendment is unnecessary and believe the Board could issue a decision based on Entergy VY's submission and any forthcoming comments but we defer to the Board on whatever process it believes is appropriate. In the event the Board believes there is any reason to depart from its normal process in this case, we respectfully request that the Board schedule a telephonic conference to identify specifically the issues that need to be resolved and to discuss an expedited process for resolving these issues consistent with Entergy VY's need for a decision by August 31, 2017. A decision by that date would allow Entergy VY to begin construction this fall, which would conserve millions of dollars of the Nuclear Decommissioning Trust fund when compared with beginning construction in the spring. NEC "empathizes with Entergy VY's sense of urgency" and "has no objection to an expedited proceeding" as stated in its letter.

Entergy VY has consulted with the Vermont Public Service Department and the Vermont Agency of Natural Resources. Entergy VY is in the process of obtaining all necessary permits for the Project and is on schedule to begin construction in September if it receives approval from the Board.

II. NEC's Letter Fails to Justify the Need for Further Process or a Hearing

NEC's criticisms of the Project's impacts fail to identify any issues requiring a hearing. First, NEC's concerns about the potential new ownership of VY Station being considered in Docket 8880 are unfounded – Entergy VY plans to install the Project, which will save decommissioning trust funds, regardless of the outcome of Docket 8880. Second, NEC does not offer any specific objections, likely because its concerns relating to the ISFSI were litigated and rejected in Docket 8300,¹ merely vaguely suggesting that "reformatting the site and building new structures such as those proposed by Entergy VY may actually exacerbate visual, planning, and site reuse impacts." NEC does not say how the Project would have these claimed impacts, how the NRC's ISFSI security requirements can be met without the Project or without these claimed impacts, or how decommissioning could proceed efficiently without the Project.

¹ In Docket 8300, NEC raised numerous concerns about the construction of the second ISFSI pad and went on to file three post-hearing motions asking the Board to reopen the record and admit new evidence or take notice of new information, and then filed a motion for reconsideration, all of which concerns and purported new evidence were denied by the Board as lacking merit. *See* Petition of Entergy Nuclear Vermont Yankee, LLC, Docket No. 8300, Order of June 1, 2016 (Order re: New England Coalition Post-Hearing Motions) and Order of July 13, 2016 (Denying Motion for Reconsideration).

III. Entergy VY's Request for Amendment is Procedurally Proper and NEC's Objections Are Without Merit

Entergy filed a request to amend the Docket 8300 CPG pursuant to Board Rule 5.408, which is the appropriate procedure. Rule 5.408 requires an amendment to a CPG issued under Section 248 (which the Docket 8300 CPG was) where there is "a substantial change in the approved proposal," which means a change that has "the potential for significant impact" on any Section 248(b) factors or on the "general good of the state" under Section 248(a). The Project's actual impact on Section 248 factors is minimal, as explained in the May 8, 2017 prefiled testimony of George Thomas, John Goodell, and Harry Dodson, submitted in support of Entergy VY's Request for Amendment. The Board previously found that the Docket 8300 scope of work did not have substantial effects under Section 248, and the same conclusion should apply here.

NEC fundamentally misunderstands Entergy VY's filing and fails to explain why the Board Rule 5.408 amendment process is inappropriate. NEC writes that "The Project is new construction" and "not simply modest modification of existing structures." We do not deny that the Project involves installing new facilities – indeed, they are described in detail in the Request for Amendment – but the work is nonetheless related to the prior work approved in the CPG and was specifically addressed by Mr. Thomas' testimony in that docket (*see* Memorandum of George Thomas at 2), and thus the amendment procedure is appropriate.

NEC also writes that "The Docket 8300 proceedings did not address the effects of a new Project" and "nowhere in the record is there a finding or admitted evidence to suggest that the effects on Section 248(b) criteria would be 'minimal.'" But Entergy VY is not claiming that the Board previously evaluated and approved this Project as part of the CPG. We argue that this Project is related to and reflects refinements to the work and plans approved in Docket 8300, and thus the amendment process is appropriate (and consistent with the approval requirements in the CPG).

Further, NEC writes that, "until the Board makes findings based on newly admitted evidence, it will be difficult for the Board to assess . . . whether or not the new structures and reformatting of the site will have a significant impact on Section 248 or other applicable criteria" (emphasis in the original). That is precisely what Entergy VY is requesting, for the Board to make findings about the current Project based on newly-admitted evidence – namely the Request for Amendment and any further evidence that the Board permits.

NEC also misunderstands the relevant procedural rules, because V.R.C.P. Rule 60(b) does not apply here. That rule applies to circumstances where the court (or Board) may relieve a party from a final judgment or order due to mistake, excusable neglect, or other reasons. This situation is unlike the Board's June 1, 2016 ruling, referenced in NEC's letter, in which the Board denied NEC's efforts to introduce new evidence because the record had been closed in that proceeding. In that situation, NEC was seeking to have the Board reconsider the CPG. Here, Entergy VY is not seeking to be relieved from the CPG. We are merely requesting an *amendment* to the CPG, a procedure established by the Board through its Rule 5.408 and

reflected in the CPG requirement to request advance approval for various changes to project plans as filed. The Request for Amendment will be evaluated by the Board through the separate procedure established in this new Case No. 17-3276-PET. This case will have a new record on which the Board will base its decision, and NEC and other parties have been given an opportunity to comment, which is the Board's normal practice with respect to CPG amendment requests.

As explained in this letter, the Board regularly decides CPG amendment requests based on written comments. If the Board determines that a departure from its typical practice is warranted in this instance and additional process is needed, we request that the Board schedule a status conference no later than July 12, 2017 by telephone conference call. Thank you in advance for your consideration and attention to this matter. Please let us know if you have any questions or require additional information about the proposed Project.

Very truly yours,
DOWNS RACHLIN MARTIN PLLC
Attorneys for Entergy Nuclear Vermont Yankee, LLC
and Entergy Nuclear Operations, Inc.

By:



Nancy S. Malmquist
John H. Marshall

Enclosures

Cc: Service List
Susan Raimo, Esq. (via email)
Tim Ngau, Esq. (via email)
Mr. George Thomas (via email)

NSM:jlpl

17625507.1

PSB Case No. 17-3276 – PET SERVICE LIST

Stephanie Hoffman, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601
Steph.hoffman@vermont.gov

Raymond Shadis
New England Coalition on Nuclear
Pollution
P.O. Box 76
Edgecomb, ME 04556
shadis@prexar.com

Aaron Kisicki, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601
Aaron.kisicki@vermont.org

Christiane Howe
Town of Vernon Selectboard
567 Governor Hunt Road
Vernon, VT 05354

Nancy H. Malmquist, Esq.
Downs Rachlin Martin PLLC
67 Etna Road, Suite 300
Lebanon, NH 03766
nmalmquist@drm.com

John H. Marshall, Esq.
90 Prospect Street
P.O. Box 99
Saint Johnsbury, VT 05819-0099
jmarshall@drm.com

Jordon Gonda
Vermont Agency of Natural Resources
1 National Drive, Davis 2
Montpelier, VT 05620
Jordon.Gonda@vermont.gov

Jennifer Duggan, Esq., Office of General Counsel
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620
Jen.Duggan@vermont.gov

Christopher Campany, Executive Director, *pro se*
Windham Regional Commission
139 Main Street, Suite 505
Brattleboro, VT 05301
ccampany@windhamregional.org

Clay Turnbull
New England Coalition on Nuclear Pollution
P.O. Box 545
Brattleboro, VT 05302-0545
cturnbull@necnp.org