NEW ENGLAND COALITION
PROPOSAL RELATED TO ADDITIONAL EVIDENCE AND HEARINGS

I. INTRODUCTION

New England Coalition ("NEC"), an intervener in the above captioned matter, proposes herein that the Vermont Public Service Board should allow for either full disclosure or discovery, consider evidence, and take testimony on the above captioned, Second Amended Petition.

NEC provides herein an annotated list of documents which it believes are made relevant and material by Entergy's surprise announcement of Vermont Yankee's pending closure and the simultaneous filing of Entergy's Second Amended Petition.

II. DISCUSSION

A. Some Investigation is Appropriate

NEC holds that the relief requested in the second amended petition, operation through 2014, is not inconsequential, presents a set of challenges all of its own, and is therefore not subsumed in the original amended petition, wherein relief requested is operation through 2032. In fact, NEC finds upon examination preparatory to completion
of reply briefs that much of the painstakingly built and extensive record is now rendered irrelevant and immaterial (subsumed, as were) by the Second Amended Petition.

Certainly, on the basis that Entergy could possibly have saved the Board and the parties large amounts of what has now been converted to pointless and fruitless labor, the Board should investigate what Entergy knew with respect to the terms of the Second Amended Petition and when they knew it.

NEC holds further that a matter of extraordinary public interest such as the near-term shutdown, physical isolation, decades-long storage, and up-to-sixty-years delayed decommissioning of Vermont's largest electric generating facility deserves at least some meaningful portion of the Vermont Public Service Board's undivided attention and investigations.

B. Evidence Should be Admitted

The documents in the annotated list provided below are made relevant and material by Entergy's surprise announcement of Vermont Yankee's pending closure and simultaneous filing of Entergy's Second Amended Petition. Most of the documents were published and available prior to or during the evidentiary phase of the Board's consideration of first Amended Petition. They were not brought forward by NEC at that time because they are more relevant and material to the Second Amended Petition, something no party, save Entergy, could have anticipated.

NEC avers that its interests, as affected by the Second Amended Petition, cannot be fully and fairly represented unless it is allowed to lay argument, based on the listed (and/or similar) documents before the Board.
New England Coalition seeks admission for the following documents, which relate to decommissioning goals, funding, costs and strategies at Vermont Yankee and across the industry.


2. News article Up to 60 years given for Vermont Yankee power plant cleanup by Bob Audette, Brattleboro Reformer - 08/30/2013

3. Trade Article, "Milestones, Challenges, and Forward strategies at Humbolt Bay and Zion" Sioban O'Meara, Nuclear Energy Insider September 2013


5. NRC Letter, "Financial Test for Decommission Funding Parent Guarantees for the Year Ending December 31, 2012. ADAMS # ML 13092A119

6. Entergy Letter, " Decommissioning Fund Status Report per 10 CFR 50.75 and 10 CFR 50.82, March 29, 2013 ADAMS # ML13092A121


C. NEC's Concerns Fall Within Two Broadly-defined Areas: Operational and Post-operational.

1. Operational Concerns

Within the operational area, the Second Amended Petition's change in the projected time-frame for shutdown raises new safety, reliability, non-radiological environmental, and socio-economic concerns.
NEC is concerned that with skilled workers leaving and others pondering the very real possibility that they will be let go in a year's time, a 'dumbed-down' and demoralized worker force, combined with a more severely constrained maintenance and operations budget, and the increased likelihood of equipment failure due to aging, Entergy will break the plant, leading to prolonged outages. Prolonged outages could very well mean that Entergy's latest fuel load will not nearly be used up by December 2014 and they could wind-up back before the Board seeking an extension of their CPG. Even so, such human-performance, maintenance, and equipment failures are, of course, foremost, a safety consideration, but also have the potential for non-radiological environmental and socio-economic negative impacts.

These concerns do not mature in a year's time, they are with us now, with every manipulation of controls to maintain plant balance, feedwater flow, steam, temperature, and pressure; and with every critical on-line maintenance operation, replacement, or repair.

Such operational concerns quickly entangle preemption issues, but more importantly require prompt effective regulatory response, something that in NEC's experience the state is not equipped, in some cases not authorized, to provide.

NEC is long experienced in working with the U.S. Nuclear Regulatory Commission, and while the agency is often a reluctant regulator, it is more agile, more effective, and quicker to act generally than the VPSB, thus in this instance it seems the more appropriate venue in which to raise NEC's operational concerns. NEC holds this view despite that fact that NRC has in the last few years moved numerous components and items of equipment from safety-related to non-safety categories, for example, the
reactor feedwater system outboard of the reactor nozzle check valve, and the primary containment-system hardened vent; again outboard of the first valve. Stating specifically that NRC oversight is not required or authorized for these areas, which are no longer considered 'safety-related, NRC has rebuffed NEC efforts to get NRC to provide oversight or regulate in these areas. In the light of this experience, NEC would suggest that the Board give extra scrutiny to Entergy claims that all plant operations and maintenance are federally preempted and off-limits to the Board.

NEC wants to know what Entergy proposes to do to ameliorate the impact of a closely looming shutdown on its organization, workforce, and human performance until December 2014. If they do not intend to replace the failing main condenser, what assurance does Entergy have that the condenser will continue to function through to the end of 2014? Will they continue with Fukushima-related upgrades? How will this affect the company's balance sheet in terms of an orderly transition to Safstor?

2. Post Operational Concerns

New England Coalition's post-operational concerns revolve around the emerging issues of decommissioning timing and quality, which in NEC's view are made more urgent, and in other ways exacerbated by the new timeline and by Entergy's public statements made at the time that a 2014 closing was announced.

Decommissioning has been inextricably interwoven in Entergy CPG dockets beginning with the very first and perhaps most seminal, Docket 6545, which at pages 31 - 35 makes it very clear that all costs and risks associated with decommissioning are transferred to ENVY and Entergy. [Emphasis Added]
“ENVY agrees to assume all liability associated with decommissioning Vermont Yankee.” (Docket 6545, Finding of Fact 24)

“In the case of a premature shutdown at a time when the decommissioning fund is not fully funded, Vermont Yankee could be placed in SAFESTOR to allow the decommissioning trust fund to increase in value until sufficient funds exist.” (Dkt 6545, FF 31.) [Emphasis Added]

“...the financial assurances that Entergy has agreed to provide ENVY will be sufficient to ensure that ENVY has the resources it needs to operate and to eventually close and decommission Vermont Yankee. In addition, commitments and obligations from Entergy’s parent corporation now back ... its proposed Vermont subsidiaries.” (Dkt 6545, p 151.)

It is unclear at this point if Entergy VY, if it closes in 2014, will ever have to appear before the VPSB, or for that matter, any Vermont state regulatory body ever again. Chopping the proposed period of extended operation really appears to narrow that possibility and proportionally heightens the need for the VPSB and the parties to 'get it right' this time.

New England Coalition believes it would be advantageous to enter into the record great swathes of relevant and potentially material testimony regarding decommissioning from other Dockets including but not limited to the following example of testimony regarding non-radiological environmental quality from Docket 7440. Here Mr. Jay Thayer, Entergy executive, is cross-examined on the decommissioning practice of rubblization, burying concrete rubble (potentially hundreds of tons) onsite. Mr. Thayer commits to no rubble burial at Vermont Yankee.

Examination by John Cotter, VDPS

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17 Q. I want to just touch base, and then I'll turn
18 it over to Mr. Burke, about the concept of rubblization.
19 In your rebuttal you agreed with Mr. Vanags that
20 rubblization would not be used as part of the
21 decommissioning process at the site; is that correct?
A. I did. Yes.

Q. And yesterday, and I think you were here, Mr. Cloutier was on the stand, and he actually discussed the fact that there are two types of rubblization. One was where clean concrete was used as fill, and the other was where you could take some contaminated concrete and blend it with some other clean material presumably to get the level of contamination down, and use that combination as a fill. Were you here for that item?

A. I was.

Q. When you agreed with Mr. Vanags that rubblization would not be used, which of those two or both, were you agreeing to not use?

A. I was agreeing to not use the -- or I was in my mind, it was the rubblization of clean concrete. I've done decommissioning work. I spent about 10 years in the decommissioning business. And I've never believed that it was a practical alternative to blend contaminated material with clean material to produce an acceptable result. That is, from a practitioner standpoint, that's not an acceptable practice.

So I was focused on the use of clean concrete as rubblized into small pieces, using that as back fill, and that has become a practice which is not used in nuclear decommissioning.

Q. Okay. So just to be clear, you were agreeing to no rubblization of any kind?

A. I guess you could say that, yes.
on-the-record review happens.

Entergy's public statements, at the time the closing was announced, focused on the maximum time allowable under the federal Safstor scheme – 60 years. This was alarming because most previous discussions had largely focused on waiting twenty years before beginning final decommissioning. Even the discussion in the Docket 6545 Findings of Fact focused on Safstor as acceptable only in the case of "premature" shutdown (Dkt 6545, FF 31.) And then "Vermont Yankee could be placed in SAFESTOR to allow the decommissioning trust fund to increase in value [only] until **sufficient** funds exist."

Both TLG and the NRC estimate that, together with NRC imposed parent guarantees, minimum sufficient funds exist now to do the radiological decommissioning of Vermont Yankee, which includes demolition and removal of plant buildings and structures, but not fuel storage and site restoration.

Again, Mr. Jay Thayer, Entergy executive:

66
20   BY MR. COTTER:
21        Q.     Could you please turn to -- it's really the
22 very bottom of page two and the top of page three of the
23 Memorandum of Understanding. And I should note Mr.
24 Miller's caution earlier that there were some changes made
25 by the Board to part of the Memorandum of Understanding,
67
1   and it is this particular section. But the part I'm
2 interested in, I believe, was unaffected by the Board's
3 order. And would you agree with me that beginning on the
4 bottom of page two, the phrase "completion of
5 decommissioning" is defined.
6        A.     I see that. Yes.
7        Q.     Would you also agree with me that that
8 definition of completion of decommissioning **excludes** spent
9 fuel management and site restoration? [Emphasis Added]
10        A.     Yes.
11        Q.     Thank you. Would you agree with me that --
12 never mind, I'll withdraw that. You heard the testimony
13 of Mr. Cloutier and Mr. Hoffman; correct, you were here?
A. Yes, I did.

Q. Do you agree with those two witnesses that the plant can be decommissioned, the physical structure, can be decommissioned without the Department of Energy beginning acceptance of spent fuel as long as all the spent fuel is in the dry storage facility away from the building?

A. I would agree with that, yes.

Transcript - Docket 744o- May 20, 2009 – Vol.1

Entergy however has assured the Board that spent fuel cask and ISFSI construction funds would be drawn on, or recovered from, the Department of Energy and not withdrawn from the decommissioning fund.

Again, Mr. Jay Thayer, Entergy executive:

Q. And subsequently on April 1, 2009, an additional filing was made with the NRC that no longer contains that 60 million dollar [parental] pledge; correct?

A. You're correct.

Q. And was something used as a substitute for that 60 million dollars?

A. Yes, it was.

Q. And what was that?

A. We look at all of our mechanisms to provide funding or to provide funds to offset decommissioning and spent fuel management costs. And as it turns out, the status of the lawsuit with the Department of Energy for damages for breach of the standard contract or spent fuel, have matured to the point where we have established that they are liable in our case, in Entergy Vermont Yankee's case, there is liability. Damages are being recovered by other companies, and in the spring of this year, and I don't have the exact date, Entergy filed its damage claim with the Department of Energy to recover costs associated with storing and managing spent fuel.

When we look forward into the decommissioning period, we said that would be -- it would be prudent for us now that the status of that lawsuit has matured, to be able to account for those funds in the future during the
remaining operating period, and during the decommissioning period, because of that assignment of liability, and the practice of recovering funds -- damages, financial damages from the DOE has now matured.

A move toward a more prompt form of decommissioning would enable communities, affected private enterprise, and the state to engage in more effective regional planning and development sooner. It would return unhampered use and enjoyment of the Connecticut River to Vermont residents sooner, and without the lurking presence of abandoned industrial structures.

With respect to fuel management, it is NEC's position that the imminence of shutdown should prompt the Board together with the parties to explore the possibility and practicality of an alternative spent fuel storage installation site, for example, a local gravel pit well above the Connecticut River flood plain. NEC avers that there is precedent for such an exploration at the Prairie Island NPP ordered by the Goodhue County Board of Environmental Protection and, if NEC is given the opportunity NEC will present evidence regarding the Prairie Island experience.

It is neither NEC's desire nor responsibility to argue its case now, but NEC intends only to place before the Board arguments, evidence, and factual considerations such that the Board will see NEC's concerns as plausible and litigable. NEC hopes the Board will take seriously the potential harm and lost opportunity to foster public good of treating Entergy's Second Amended Permit as if its effect were to simply dial back the clock on cessation of operations.

Given the opportunity to defend its interests as an intervener, New England Coalition will gladly provide evidence and expert testimony in consideration of the Second Amended Permit for the Board's review and with opportunity for cross-examination by opposing parties. This process is essential to understanding the ramifications of moving up the projected shutdown date and influencing the formulation of company policy going into the post-shutdown activities period.
D. Federal Preemption in Decommissioning

1. Timing of Decommissioning

The U.S. Nuclear regulatory Commission ("NRC") allows licensees a choice of equally acceptable decommissioning regimens and sets a timetable for approved activities within those options. NRC is neutral about whether the licensee chooses to do a prompt decommissioning (DECON) or a delayed decommissioning (Safstor), thus if a state regular attempts to influence the choice of options it cannot be said to be interfering in the federal regulatory scheme. NEC could find no precedent for a state mandating the timing of decommissioning.

The Board has already ordered that Safstor is acceptable only in certain circumstances, namely premature shutdown and lack of funds to do decommissioning. (see, Docket 6545 – Findings and Order, above ). Entergy already has funds, apart from fuel storage and site restoration, which are in any case separated from decommissioning in the MOU and are sufficient to complete radiological decommissioning.

There are sufficient reasons to back off from 60 years of maintaining, monitoring, and regulating an abandon site that are not concerned with radiological safety, but include areas traditionally regulated by the states.

2. Quality of Decommissioning

Non-radiological issues are typified in the foregoing discussion on "rubblization" of concrete. However, even regulation of radiological components of decommissioning fall to the state's authority when NRC declares that the licensee has successfully fulfilled the conditions of its License Termination Plan; which marks the end of NRC oversight. Thus Massachusetts and Maine have radiological site release standards 2 ½ times more stringent than those of NRC.
III. CONCLUSION

For all of the good foregoing reasons and in consideration of the foregoing worthy concerns regarding the post-terminus period of Vermont Yankee operation that can be affected by the newly-requested CPG, New England Coalition respectfully requests a hearing on the matter of Entergy's Second Amended Petition.

Given the limited issues entailed and the voluminous record already in hand, a lengthy proceeding is not warranted.

NEC would suggest a proceeding in four parts:

(1) full disclosure of all materials relevant to the decision to close in 2014 and plans for the post-operation period (ongoing) or one round of discovery upon the petitioner.

(2) Presentation of Pre-filed Testimony (simultaneous)

(3) Technical Hearings – Cross Examination and Live Rebuttal

(4) Briefs (no Reply). New England Coalition believes this could be accomplished in 8 to 10 weeks, which is not an onerous delay.

The Petitioner has already announced its intention to keep VY running regardless of the Board's decision on a CPG, so the petitioner is little harmed.

Parties should be permitted to file reply briefs on the first Amended Petition, as scheduled on October 9, 2013, leaving it to the Board to consider and reconcile both Briefs on a schedule and in a fashion it deems appropriate.

In the event the Board does not consider a new abbreviated proceeding necessary, New England Coalition requests the parties be permitted to file a single round of simultaneous briefs solely on the Second Amended Petition in the second week of November.
The parties should be permitted the introduction of testimony accepted in previous
dockets where the record is rich regarding post-operational concerns.

Respectfully Submitted,

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Second 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) for authority to continue after March 21, 2012, operation of the Vermont Yankee Nuclear Power Station, including the storage of spent

Docket No. 7862

CERTIFICATE OF SERVICE

NOW COMES Raymond Shadis, Pro Se Representative, and hereby certifies that New England Coalition’s Proposal Related to Additional Evidence and Hearings was served upon the individuals listed in the attached Service List, and sent to the same via email, on October 9, 2013.

DATED at Edgecomb, Maine, October 9, 2013.

Copy to: Service List

By:

New England Coalition, Inc.
STATE OF VERMONT
PUBLIC SERVICE BOARD

Second 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) for authority to continue after March 21, 2012, operation of the Vermont Yankee Nuclear Power Station, including the storage of spent nuclear fuel

Docket No. 7862

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