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

November 22, 2013
By Hand Delivery
Mrs. Susan Hudson, Clerk
Vermont Public Service Board

New England Coalition hereby respectfully provides to the Vermont Public Service Board one original and six copies of

NEW ENGLAND COALITION'S COMMENTS ON REPLY BRIEFS

Service has been provided to the parties per the attached Certificate of Service.

Respectfully submitted,
New England Coalition, Inc.
By its pro se representative,

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Raymond Shadis
NEW ENGLAND COALITION'S COMMENTS ON REPLY BRIEFS

Intervener, New England Coalition ("NEC"), by and through its pro se representative, Raymond Shadis, respectfully submits New England Coalition's Comments On Reply Briefs in response to the Post-Hearing Reply Brief of Entergy Nuclear Vermont Yankee, LLC ("ENVY"), and Entergy Nuclear Operations, Inc. ("ENOI"; together, "Entergy"). Entergy's Post-Hearing Reply Brief was filed in support of their Second Amended Petition for amendment of their Certificate of Public Good ("CPG") under 30 V.S.A. § 23 1(a) and any other approvals required for authority to continue after March 21, 2012 and until December 31, 2014, operation of the Vermont Yankee Nuclear Power Station ("VY Station"), including the storage after December 31, 2014 of spent nuclear fuel ("SNF") derived from such operation.

INTRODUCTION

The purpose of these Comments is to respond to certain Entergy arguments and assertions that were colored by its surprise announcement that it would be ending operations in 2014, by its very untimely filing of a Second Amended petition and which NEC could not have anticipated.

DISCUSSION
Virtually all parties, except Entergy agree that ENVY’s initial brief and proposal for decision has not justified the granting of a CPG for operation of the VY Station through 2032.

NEC holds that the only conditions that could tip the balance of public good in favor of issuance of a CPG for operation of Vermont Yankee until the end of 2014, would be conditions (1) extending the Board's jurisdiction into the post-operation period until NRC License Termination, (2) requiring that Entergy exercise prompt decommissioning; or what is known as the NRC DECON option (3) requiring that after NRC License Termination and prior to ceasing all decommissioning activities, including site restoration, Entergy will demonstrate that the Vermont Yankee site has been radiologically remediated to standards equivalent to those incorporated in the Maine Yankee License Termination Plan (US NRC ADAMS ACCESSION NUMBER ML011560256)¹

¹ P.O Preface-Maine Yankee License Termination Plan Requirements-A Non-Technical Summary

P.O. Preface- Vermont Yankee License Termination Plan Requirements – A Non-Technical Summary

P.1 Introduction

Maine Yankee received feedback from a number of different stakeholders concerning plans for license termination and releasing the site for other uses. These stakeholders include the Maine Department of Environmental Protection, Department of Human Services Division of Health Engineering, the State Nuclear Safety Advisor, the Governor’s Technical Advisory Panel, the Maine Yankee Community Advisory Panel, the Environmental Protection Agency, town of Wiscasset officials, Friends of the Coast, and various private individuals.

The feedback has generally indicated a desire for Maine Yankee to go beyond the NRC regulatory requirements (including ALARA) in reducing residual radiation exposure on-site. To that end, in the Preface to the Original License Termination Plan submitted on January 13, 2000, Maine Yankee proposed a site release standard of not more than 10 mrem/year for all pathways, including not more than 4 mrem/year from groundwater sources of drinking water.

On April 26, 2000, the Governor of the State of Maine signed into law LD 2688-SP1084, “An Act to Establish Clean-up Standards for Decommissioning Nuclear Facilities.” This legislation amended the Maine State definition of Low Level Radioactive Waste to exclude radioactive material remaining at the site of a decommissioned nuclear power plant if the enhanced state standards described in the new law are met. Prior to the passage of this legislation, on April 14, 2000, Maine Yankee had signed an agreement with several Maine groups to support this legislation and to fulfill our mutual intent to reduce the radiological burden at the Maine Yankee site. These groups included “Safe Power for Maine,” “Citizens Against Nuclear Trash,” “Friends of the Coast - Opposing Nuclear Pollution,” and the Town of Wiscasset. The state law and the agreement identified above go beyond the NRC regulatory requirements in reducing residual
What Entergy VY characterizes as having "decided voluntarily to cease operation of the VY Station by the end of December 2014" is actually a force majeure decision due to Entergy Vermont Yankee's inability to compete profitably in the Northeast wholesale electricity marketplace; hence its requested relief to a CPG for that much more limited term.

Entergy VY’s case for the CPG is reduced only in terms of its requested relief, none of the other issues raised in this extended and voluminous litigation go away. Furthermore the issues and considerations in this case are changed in ways that cannot be untangled by merely adding appendices to Reply Briefs or providing Comments thereto.

Entergy purports that costs and benefits, previously argued in the context of 20 years of extended operation, will when considered in the context of proposed operation only until the end of 2014, change proportionately; in locked ratio.

This simplistic approach does not take in consideration negative impacts that an accelerated schedule of retirement may have, for example, on regional planning, skilled worker retention and recruitment, human performance, access to finance, equipment replacement and maintenance, allocation of plant resources,

The larger meaning in Entergy’s retreat from projecting 20 years of extended operation to just completing the current fuel cycle is Entergy Vermont Yankee management radioactive contamination remaining on-site at license termination.

This section of the LTP has two purposes:

• To discuss key elements of the LTP while lending perspective with respect to public health and safety and
• To review the steps beyond the NRC regulatory requirements Maine Yankee will implement in being responsive to stakeholder feedback and state legislation. These steps are factored into Sections 1 through 9 of the License Termination Plan.

P.O. Preface- Vermont Yankee License Termination Plan Requirements – A Non-Technical Summary (2001) NRC ADAMS Accession Number ML011560256
has failed to make a go of the wholesale enterprise.

Entergy would have the Board focus on the small, cropped, and somewhat pixilated picture while embracing regulatory amnesia for all that has gone before.

The fact is that Entergy's decision to close a nuclear generating station, in which it has invested more than $400 million in purchase price and upgrades, is a tacit admission that it can no longer measure up to the several factors identified by the Board as key to a 30 V.S.A. § 231(a) determination, including “assessments of technical and managerial competence, of financial strength and soundness, and of matters related to reputation and conduct (often stated as whether the owner, manager or operator will be a fair partner for Vermont).” Docket 7862, Am. Pet. of Entergy VY for amendment of CPG, Order of 6/19/13 at 7 (citing Docket 7770, Am. Joint Pet. of Central Vt. Pub. Serv. Corp., Order of 6/15/12 at 23).

Whereas previously Entergy claimed a level of technical and managerial competence, of financial strength and soundness to be capable of running Vermont Yankee profitably and reliably for the span of another generation, it now, apparently, is certain that it can run, provide upkeep, and lose money (or hopefully break even) for only one more calendar year.

NEC would add that although Entergy arguments regarding the severity of its many transgressions against this Board involving a willingness to deceive, an attitude both bullying and corrosive of the process, lack of candor, frankness, openness, transparency are at least worthy of discussion and review in the context of denying a CPG, on the whole it betrays a lack of character not conducive to trust.

One criterion listed above has not been much discussed, except perhaps by CLF through its attempts to introduce many exhibits drawn from the Vermont Press, is "reputation." It is common knowledge, and likely not disputed by Entergy, that Entergy did
more during its tenure at Vermont Yankee to thoroughly shred its reputation that all of its opponents combined.

**PREEMPTION.**

Entergy's reliance is entirely misplaced, at least insofar as the timing of decommissioning (SAFSTOR v. DECON). *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm ’n*, 461 U.S. 190 (1983) (“PG&E”), may quibble over the state's economic interest in a regulated plant, as opposed to a 'merchant' plant in the instance of freezing plans to construct a plant, but plainly the decision rests on the state's legitimate financial interest regardless of what stage or in what condition the plant may be found. The salient point is that field preemption does not necessarily block the state's protection of its financial interests. In the Case of Vermont Yankee, the state has a well established interest in the timely restoration of the VY site, not only for the site's potential redevelopment value, but also for concerns of regional planning and development. Further, some consideration must be given to the impact of a lingering, derelict industrial facility on the site's potential recreational, aesthetic, and natural resource value; all diminished by a delayed decommissioning.

As explained in NEC’s Reply Brief, conflict preemption is not at issue here inasmuch as NRC provides the various decommissioning regimens as options not mandates. Further NRC claims no preference of options. Further, both conflict preemption and field preemption do not cover vacuums in regulation.

**ADEQUACY OF DECOMMISSIONING FUNDS**

Whether or not Entergy has enough money to complete decommissioning, it has been clearly established that the company has enough money to complete radiological decommissioning, which by definition includes removal of contamination and removal of affected structures.

In any case the liability remains with Entergy. It was Entergy's choice not to donate to the decommissioning fund and it was Entergy's choice not to pursue collection of decommissioning funds through its wholesale customers as passed on to end users, where such tariffs would have been passed through Vermont Yankee Nuclear Power Corporation or other wholesale clients to
retail consumers in Vermont and other New England States.

**COOLING TOWER DRIFT**

Entergy's argument that "no record evidence supports a finding that the Vermont Yankee's cooling tower drift will have an undue adverse effect on air purity or the natural environment" is without merit and in substance at least partially irrelevant. The prefiled direct testimony of NEC's witness, Raymond Shadis regarding cooling tower was orally sworn into evidence while Entergy passed up the Board's invitation to cross-examination. NEC provided Entergy with several supporting documents, indicating the potential harmful effects of drift, in answer to discovery requests. While Entergy had ample opportunity to investigate and address this concern, it chose to 'stonewall' on the issue going so far as to seek to exclude as an NEC Cross-examination exhibit, excerpts from, the US NRC Site Specific Environmental Impact Statement for the License Renewal of Vermont Yankee, NUREG-1437, Supplement 30 -August 2007, which Entergy now seeks to introduce, by reference only and without substantive quotes, as exculpatory evidence. Entergy's reliance is misplaced in as much as NEC only sought to introduce this document, and through it its Generic Environmental Impact Statement counterpart, as evidence that a federal agency had determined that drift at VY was substantial (183 gallons per minute) and the drift droplets could carry and concentrate chemical and biological impurities, as well as respirable particles.

For example,

- The monthly average evaporation rates and corresponding water consumption rates are small compared to average river flow, in the worst case amounting to less than 1.5% of the minimum river flow value of 1,250 cubic feet per second (cfs). Under EPU conditions, the drift rate is estimated at 183 gallons per minute (gpm),
- The average water deposition rate over all directions drops off rapidly with distance from the cooling tower,
- The highest predicted offsite water deposition rate over land is approximately 0.10 in. per month (compared to the lowest long-term average monthly precipitation rate (Albany, NY, meteorological station) of 2.39 in.).
The water drift deposition rate falls to 0.04 in. per month at 500 m and below 0.01 in. per month at 900 m downwind of the cooling tower,
• The predicted change in drift rate from existing power rate to EPU (120%) is small,
• With meteorological data spanning a five-year period (i.e., encompassing all meteorological conditions expected to be encountered), modeling determined that the drift rate of the cooling tower is essentially constant.

4-50 NUREG-1437, Supplement 30 August 2007

Both Entergy and NRC rely on the notion that New England Coalition is concerned about air pollution when in fact NEC was/is concerned about the spraying and concentrating of biocides and pathogens as a topical application. Entergy and NRC dismiss the matter because the toxins released do not reach the bulk threshold action levels under air pollution laws. Pointedly, air pollution laws do not address topically applied chemicals or pathogens, but other more appropriate regulations do. For example, the federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 et seq., as defined in the frontal matter of following the federal court decision:

Succinctly, the USA alleges that Tropical Fruit has violated federal law Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 et seq., and the Comprehensive Environmental Response Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., during the operations of its pesticides applications. The government asserts that Tropical Fruit when spraying pesticides would frequently spray in such a manner as to cause the pesticides to unlawfully drift onto adjacent properties. To quell Tropical Fruit's illegal pesticides usage, the Environmental Protection Agency ("EPA"), pursuant to CERCLA, issued an Administrative Order ("EPA Order"), dated December 20, 1996, requiring Tropical Fruit, inter alia, to cease spraying pesticides that are or contain hazardous substances in such a manner that the pesticides drift beyond the boundaries of its property. (Docket No. 42, Attachment 2— Exhibit 2 ¶ 32); see also 42 U.S.C. § 9606(a). The USA maintains that Tropical Fruit nevertheless continued to spray pesticides allowing drift on at least seven (7) separate occasions in contravention of the EPA Order. The USA filed the instant suit on March 26, 1997. (Docket No. 1).

In the end, NEC's concern is not with regulated application, but with unmeasured, untested harm to the human and natural environment. Entergy should be required to undertake serious scientific, verifiable studies to quantify that harm.

CONCLUSION
The Board should not grant Entergy VY’s Second Amended Petition
absent conditions that address the foregoing valid concerns,

Edgecomb, Maine

November 22, 2013

Respectfully submitted,
New England Coalition, Inc.
By its pro se representative,

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Raymond Shadis