



October 25, 2013

Ms. Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street – Drawer 20
Montpelier, VT 05620-2701

RE: Docket 7862

Dear Ms. Hudson and Parties:

Please find attached the Reply Brief of the Windham Regional Commission in Docket 7862.

Enclosed for filing with the Public Service Board are an original and seven copies of the WRC's reply brief. Copies of this filing on all parties of record in Docket 7862 have been sent today by both email and U.S. Postal Service.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Campany", is written in a cursive style.

Chris Campany, AICP
Executive Director

Enclosures

Cc: Docket 7862 Service List

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket 7862

October 25, 2013

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)

REPLY BRIEF OF WINDHAM REGIONAL COMMISSION

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Introduction

Windham Regional Commission (WRC) filed an initial brief on August 16, 2013 focused on three major areas that would support the long-term orderly development of the region. First, WRC sought to have responsibility for operations and decommissioning held jointly and severally by Entergy Nuclear Vermont Yankee (ENVY), Entergy Nuclear Operations (ENO), and Entergy Corporation.¹ Second, WRC sought to ensure the Decommissioning Trust Fund will be adequately funded to cover all reasonable costs associated with prompt and complete decommissioning upon shutdown whenever that might occur. Third, WRC sought to clarify the extent of decommissioning and accuracy of the decommissioning budget, such that it will meet standards agreed to by Entergy VY at the time of the sale, and will promptly return the 148 acre industrial site to productive economic use without the use of SAFSTOR.

WRC continues to advocate for the prompt movement of spent fuel from wet to dry storage as a means of addressing the related costs as an operational expense, rather than allowing Entergy VY to attempt to shift those costs onto the Decommissioning Trust Fund.

Since the filing of initial briefs in this docket Entergy Corporation and Entergy VY have announced intent to cease operations in the fourth quarter of 2014, rather than continue operations through 2032.² This announcement does not significantly change any of the positions advocated by WRC, but the notice of intent to cease operations increases the importance and urgency of holding Entergy Corporation and its named affiliates jointly and severally responsible for operations and decommissioning, full funding of the Decommissioning Trust Fund, and prompt and complete decommissioning following cessation of operations.

WRC offers this reply brief in response to other parties' initial briefs and the subsequent filing of a *Second Amended Petition* by Entergy VY. WRC does not intend to repeat all of our arguments, or refute all points raised by other parties where we believe those points have been adequately addressed by the factual record before the Board, or in the initial brief of WRC. As such, the Board should not view silence by WRC on any particular issue as a concession as to the merits of an opposing argument.

The Vermont Yankee Station is an important economic engine within the Windham region and we are greatly concerned about the economic and social issues underlying this docket, both while the Station is operating and following cessation of operations. WRC has remained consistently neutral as to whether Entergy VY should be granted a new or amended Certificate of Public Good (CPG), and we take no position on that question today. However, we reiterate our

¹ Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations, as certificate holders, are hereafter referred to as Entergy VY.

² Docket 7862 *Second Amended Petition* of Entergy VY 8/27/13; WRC-X; WRC-Y. For the purposes of this reply brief WRC assumes the Station will cease operations at the end of the current fuel cycle, now expected to occur in October 2014. That would have the Station operating for approximately 30 months after the expiration of authority to operate granted in docket 6545.

argument that “an anticipated and well-planned shutdown is preferable to an unexpected and unplanned shutdown.”³

We encourage the Board to carefully consider the petition filed by Entergy VY and all the evidence and testimony, and to then identify conditions that would favorably address the recommendation of the WRC and serve the orderly development of the region. While we do not advocate for the granting or denial of a certificate, we ask that if a certificate is granted appropriate conditions be attached to assure adequate funding and prompt and complete decommissioning, as well as shared corporate responsibility. We also ask that whether or not Entergy VY is offered a CPG, conditions necessary to serve the orderly development of the region and the general good should be applied retroactively to that period of time through which the Station has operated without an authorizing CPG.

We note that Entergy VY, the State of Vermont, and all other parties to this docket have expended considerable financial resources in this CPG process, and that continuing litigation further burdens each participant and the Board. WRC believes resolution that assures prompt and complete decommissioning would allow Entergy VY and the State of Vermont to shift resources from non-productive litigation into effective decommissioning operations and support for regional economic development. We also recognize that Vermont is governed by a Citizens Legislature that will return to session in January 2014, and that a concluding Order issued by the Board before that date would probably aid in developing a negotiated package of legislative solutions to support a smooth transition from operations to decommissioning.

WRC has not addressed nuclear safety issues, nor are our recommendations grounded in nuclear safety. To the extent that the Board believes desirable conditions requested by WRC or other parties may be preempted by federal law or not authorized by Vermont statute, we ask the Board to identify those conditions, and to include a recommendation to the Nuclear Regulatory Commission (NRC) and other regulatory bodies in support of the requested relief. The Board has spent considerable time reviewing the Entergy VY petition, and parties have expended great resources in building a solid record. It would be helpful to have the Board’s informed perspective available to the NRC and Vermont legislature, even if only in advisory terms.

I) ENTERGY VY IS RESPONSIBLE FOR THE DELAY IN CONSIDERATION OF ITS PETITION FOR A NEW OR AMENDED CPG, AND IS ACCOUNTABLE FOR ONGOING OPERATIONS IN THE ABSENCE OF AN AUTHORIZING CPG

WRC has been engaged in the Entergy VY CPG process since October 2007 when Entergy VY and WRC jointly began exploring regional interests that should be addressed in the Title 30 §248 prefile notification, and a subsequent petition that became the basis for docket 7400 and later docket 7862. WRC has expended extraordinary effort, time and money in this six year odyssey. We remain troubled by the delays that we have previously argued were the direct result of

³ Docket 7862, WRC initial brief, 8/16/13, page 31

Entergy VY's tactics,⁴ and we are dismayed by Entergy VY's apparent sense that the Station can operate in the absence of PSB authorization, and can do so without consequences.

In its docket 7862 initial brief Entergy VY once again attempted to lay blame for the docket 7440 delay upon the legislature and the Board, quoting Board Chairman Volz stating " We're not going anywhere [in that docket]. The Legislature says we can't issue an order."⁵ Entergy VY has often quoted this single extemporaneous statement offered in docket 7600 on November 10, 2010 as one basis for its argument, but has failed to place the statement within proper context of the delay.

Entergy VY was certainly presented with unique challenges created by the Vermont legislature's passing of Act's 74 and 160. Yet Entergy VY was also presented with multiple opportunities to address those concerns in a timely manner, but instead chose to proceed on regulatory ground that only Entergy VY believed to be unstable. The Board has recognized the leading role Entergy VY has had in fostering delay, and addressed the root cause of the delay in its docket 6545, 7440, 7862 *Order re: Motion to Amend*, in which the Board responded to Entergy VY's request to amend Orders and CPG's in prior dockets to allow ongoing operations:

"But a fair reading of the history indicates that Entergy VY made tactical choices at each step of the process, such as deferring challenges to statutes it believed were preempted, that ultimately created the hardship of Entergy VY having to decide whether to operate without state authorization. Nonetheless, had Entergy VY made different choices, such as immediately challenging the legislative enactments it asserted were preempted, it would not be in the present situation. To be clear, the Board does not fault Entergy VY for the choices it made. In a different set of circumstances, Entergy VY's strategy might have produced better results for itself. Evaluation of the merits of Entergy VY's approach is not before the Board. Instead, the question is whether Entergy VY has demonstrated good cause to be relieved from judgment pursuant to Rule 60(b). Here, the Vermont Supreme Court has made clear that Rule 60(b) is not available to relieve a party of the effects of tactical decisions. Entergy VY has failed to present any arguments that would demonstrate that it was unanticipated legislative action, rather than Entergy VY's knowing decisions of how to react to such action, that resulted in the present situation."⁶ (Emphasis added)

⁴ WRC's history of engagement is outlined in the docket 7440 *WRC Motion for Reimbursement* dated 4/13/12, included as an attachment to the docket 7862 WRC initial brief filed on 8/16/13. In the interest of economy WRC will not cut-and-paste the arguments in that Motion, but asks instead that if the Board wishes more detail about the options available to Entergy VY before it initiated federal litigation, that it review the Motion, and specifically review pages 9-13 and the conclusion.

⁵ Docket 7862, initial brief of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations Inc., 8/16/13, Page 112. Entergy VY fails to mention that the statement wasn't made in docket 7440, and Chairman Volz concluded by saying of docket 7440: "We can't talk about it. We didn't notice this. This isn't noticed so we can't talk about it. Sorry." (Docket 7600, Status Conference, 11/10/10, Transcript, page 44, line 6)

⁶ Dockets 6545, 7440, 7862, *Order re: Motion to Amend* 11/29/12, page 21

...
“The present situation is also a product of Entergy VY’s strategic decisions concerning how to structure its request for Board approval. Entergy VY filed a combined application in 2008 seeking authorization from the Board under Section 231 and 248(e)(2). It presented a unified set of testimony on the two separate authorizations. It subsequently challenged the latter section and has now filed for approval under Section 231 alone. However, Entergy VY did not challenge the Board’s jurisdiction under Section 231. Since Entergy VY knew that it would need approval under Section 231 even if it prevailed in its challenge to Section 248(e)(2), the Company could have filed separate petitions so as to preserve its legal options and avoid having the evidence commingled.”⁷

When docket 7440 culminated with reply briefs on August 7, 2009 Entergy VY was continuing to negotiate a Power Purchase Agreement (PPA), and had stated that it would likely file one in the near future. Entergy VY recognized the importance the Board placed on a PPA, and in Oral Argument in docket 7440 asserted that negotiations were ongoing and “active.”⁸ And on December 18, 2009 Entergy VY advised the Board that it was preparing to make a unilateral offer to sell power to Green Mountain Power and Central Vermont Public Service Corporation (CVPS), and would do so “in early January 2010.”⁹ Entergy VY had not yet received a license extension from the NRC, so any delay through this period did not significantly disadvantage Entergy VY.¹⁰ On January 14, 2010 the Department of Public Service¹¹ advised the Board that Entergy VY did not provide accurate information to its contractor regarding underground pipes, and other parties subsequently raised similar concerns about inaccurate testimony in docket 7440, and about ongoing tritium leak(s).¹² The Board reasonably sought a corrected record before it would issue a final Order. Until that point it was entirely reasonable for the Board to hold off on issuing an Order in docket 7440 until Entergy VY had provided a PPA, or conceded that it would not do so. Subsequent delays were a result of the tritium leak(s) and the misleading testimony and exhibits, matters for which Entergy VY is solely responsible. These delays and the

⁷ Dockets 6545, 7440, 7862, *Order re: Motion to Amend* 11/29/12, page 25-26

⁸ Docket 7440, Oral Argument, 10/7/09, transcript, page 49, line 9

⁹ Letter from Entergy VY Vice President Jay Thayer to Susan Hudson, Clerk of the Board filed with the Board after the conclusion of briefing in docket 7440. The date on the letter is December 18, 2008, but the cover letter issued by Downs Rachlin Martin lists the date as December 18, 2009, and the context of the letter makes clear the correct year is 2009. WRC is not aware of whether this letter has been entered in the docket 7862 record, but we believe the Board may take official notice of the filing because it is a filing made directly to the Board. See DPS initial brief, page 49, footnote 14: *Re New England Teleph. & Teleg. Co., 1 P.U.R.3d 33, 51, 0053 WL 81977 (Vt. P.S.B. June 5, 1953)* (“We believe we have the right to take judicial notice of reports filed with us.”). The Board previously addressed the period between the filing of docket 7440 reply briefs and the identification of the tritium leaks in its *Order re: Motion to Amend*, 11/29/12, page 26, but did not mention the impending offer of a PPA.

¹⁰ Entergy VY did not receive its NRC license extension until March 21, 2011, see docket 7862, EN-TMT-2

¹¹ The Department of Public Service (DPS) and Public Service Department (PSD) are used interchangeably, and reflect a change in State preferred nomenclature from DPS to PSD during the course of the docket 7440-7862 process.

¹² Docket 7440, *Procedural Order*, 1/29/10, page 1; Docket 7600, *Order Opening Investigation And Notice of Prehearing Conference*, 2/25/10, page 1

additional delays that followed have been addressed in the Board's docket 6545, 7440, 7862
*Order re: Motion to Amend.*¹³

Entergy VY's authorization to operate the Station expired on March 21, 2012. It was not until March 13, 2012 that Entergy VY sought a ruling from the Board that, among other things, 3 V.S.A § 814(b) would allow continued operations, but the Board said no.¹⁴ Entergy VY later sought an amendment of those provisions of CPG's and Orders that limited operations after March 2012, but again the Board said no.¹⁵

As the expiration of operating authority drew near Entergy VY could have attempted to negotiate a Memorandum of Understanding (MOU) with the Department and/or other parties (including WRC) to allow temporary operations while the CPG case proceeded, and then sought specific authorization for temporary operation from the Board, but Entergy VY made no attempt to do so and instead continued operation in disregard of the Board's clearly articulated analysis. The Board is the authority in this matter, and Entergy VY's argument that the legislature created the delay, or that the Attorney General or the Department of Public Service approved of continuing operations should have no merit.¹⁶

WRC embraces the Department's initial brief findings 135-137 and asks the Board to once again repeat its clear reasoning as to why Entergy VY has lacked authority to operate after March 21, 2012, and to hold Entergy VY to account for operating without appropriate authorizations. We recognize a relevant appeal of docket 7440 is pending before the Vermont Supreme Court¹⁷ and do not offer any particular remedy at this time. Where we have recommended payments to the Decommissioning Trust Fund based on operations after March 21, 2012, we view those payments as necessary to serve the general good while operating, and not as penalties.

II) OWNERSHIP RESPONSIBILITIES AND LIABILITIES ARE HELD JOINTLY AND SEVERALLY

WRC addressed ownership responsibilities in our August 16, 2013 initial brief.¹⁸ We identified Entergy Corporation through its affiliate Entergy Nuclear, as interceding in docket 6300 to dismiss the then-pending petition of AmerGen (finding 7). We identified Entergy Corporation as the owner and operator of the Station through its subsidiaries ENVY and ENO (finding 8), and identified one of the key roles Entergy Corporation plays in the financing of the VY Station (finding 12). In essence, WRC has established that from the origin of docket 6545 until the present day it has been Entergy Corporation that actively controls the VY Station, and that

¹³ Dockets 6545, 7440, 7862, *Order re: Motion to Amend* 11/29/12, page 26

¹⁴ Docket 7440, *Order re: Entergy VY Motion For Declaratory Ruling*, 3/19/12. Nevertheless, Entergy VY continues to claim protection under the timely renewal doctrine of 3 V.S.A. §814(b), see Entergy VY docket 7862 initial brief, page 3

¹⁵ Dockets 6545, 7440, 7862, *Order re: Motion to Amend*, 11/29/12

¹⁶ Entergy VY initial brief, 8/16/13, page 110, section (g); see also and most specifically page 112 footnote 58

¹⁷ Docket 2013-042, Vermont Supreme Court

¹⁸ Docket 7862 WRC initial brief, 8/16/13, pages 24-25, finding 7-23

subsidiaries ENVY and ENO are merely holding companies designed to shield the parent corporation. We now add that on August 27, 2013 it was Entergy Corporation, through its Chairman and Chief Executive Officer Leo Denault, which announced the impending closure of Vermont Yankee,¹⁹ further solidifying the role of the parent corporation in control of the VY asset from the very beginning until the very end.

WRC asks the Board to recognize the announcement of closure by Entergy Corporation as an additional finding in support of holding ENVY, ENO, and Entergy Corporation jointly and severally responsible for decommissioning expenses such that if for any reason the trust fund is insufficient, each of the three entities will be held responsible for making the fund whole.

III) THE PUBLIC SERVICE BOARD HAS JURISDICTION TO CONSIDER THE ADEQUACY OF THE DECOMMISSIONING TRUST FUND FOR RADIOLOGICAL DECOMMISSIONING, SPENT FUEL MANAGEMENT, AND SITE RESTORATION

Entergy VY argues in its initial brief that federal law constrains the Board's authority over decommissioning, and then specifically addresses preemption with regard to radiological decommissioning and spent fuel management.²⁰ WRC agrees that actual radiological decommissioning and the decisions related to radiological decommissioning are under the jurisdiction of the NRC. However, the availability of funding for those functions and the manner in which the funds are used remains within the jurisdiction of both the NRC and PSB.²¹

Entergy VY has voluntarily maintained a single comingled Decommissioning Trust Fund that it expects will accommodate radiological decommissioning, spent fuel management, and site restoration to Vermont standards. And Entergy VY entered into an MOU that includes a sharing provision such that any excess funds at the completion of decommissioning shall be split with ratepayers, because it is ratepayers that have contributed every penny in the fund (aside from the investment growth on ratepayer contributions).²²

Entergy VY also claims a right to commence decommissioning whenever it chooses within the 60 year period allowed by the NRC, and has made no commitment to actually decommission the Station when/if the fund is adequate to do so. Thus, Entergy VY could extend a period of SAFSTOR specifically to allow the fund to grow so that it would receive benefit from the sharing provision, and could elect to spend excessively or cheaply on radiological decommissioning and spent fuel management to affect the balance of that fund.

¹⁹ Docket 7862, WRC-X

²⁰ Docket 7862, Entergy VY initial brief, 8/16/13, page 29

²¹ For additional discussion about the jurisdictional question please see Docket 7862 *WRC Reply to Entergy VY Objection to Admission of Prefiled Direct testimony And Exhibits*, 12/12/12, page 3 (Decommissioning) and page 4 (Spent Fuel Management).

²² See Docket 7862 WRC initial brief, 8/16/13, page 58 for relevant WRC findings and conclusions in favor of a segregated fund.

Even though it appears that the decommissioning trust is not currently adequate and funds are unlikely to be available for sharing, the potential to use long-term SAFSTOR maintains the relevancy of the sharing provision and adds a perverse incentive for Entergy VY to manage the radiological and spent fuel management costs, and the length of SAFSTOR for its own financial benefit.

Although it is not likely, Entergy VY could also conceivably choose to radiologically decommission the site and nearly deplete the decommissioning fund, leaving an inadequate remainder to fund site restoration. If the Board accepts Entergy VY's assertion that Vermont has no jurisdiction over radiological decommissioning and the NRC has no interest in site restoration, it is possible that radiological decommissioning could exhaust the fund, and the State of Vermont would have no apparent recourse.

Entergy VY has conceded that the adequacy of the fund for site restoration and related expenses is not preempted and is within the purview of the Board.²³ The timing of site restoration will have a significant effect on the State, region, and host municipality because any delay in returning the site to productive use following cessation of operations has negative land use impacts upon the economy of the region. Thus, spending within preempted areas has a direct effect on matters of land use such as the timing of site restoration and return of the site to productive economic use.

The Public Service Board retains authority to approve (or disapprove) of payments from the fund for purposes other than decommissioning, payment of administrative expenses, and distribution of funds upon completion of decommissioning.²⁴ Thus, the Board has a role as a trustee of the fund on behalf of the ratepayers. Since every dollar spent or not spent on radiological decommissioning and spent fuel management may ultimately become a half-dollar in the pocket of Vermont Ratepayers, the State of Vermont and the Board retain an interest in the financial management of preempted activities. Likewise Entergy VY has considerable latitude over how to characterize an expense (i.e.: radiological decommissioning, spent fuel management, or site restoration) and could use this discretion to avoid Board oversight with regard to some potentially disputable expenses. Even if the Board is preempted from taking direct action with regard to spending within preempted areas, where the Board has a concern that Entergy VY is spending the trust fund imprudently in areas regulated by the NRC or Department of Energy (DOE), the Board may certainly bring those matters to the attention of the appropriate federal authority, and it must have oversight and fact finding authority to do so.

This case is unique within the legal history of preemption. The voluntarily comingled nature of the Decommissioning Trust Fund and the sharing provision, which Entergy VY insisted on as part of the purchase deal, have established an important financial interest for the State of Vermont in all areas of decommissioning. WRC urges the Board to carefully explain the issues and factual record in this case as distinguished from prior federal court decisions. WRC draws

²³ Docket 7862, Entergy VY initial brief, 8/16/13, page 31

²⁴ Docket 6545 MOU paragraph 7

attention to the August 14, 2013 decision of the Second Circuit. That case involved different issues, litigants, and most especially a different factual record. The Appellate Court stated, among other things, “by regulation, decommissioning funds may not be used for non-decommissioning related expenses, such as [spent nuclear fuel] storage.”²⁵ The record in docket 7862 establishes a different set of facts regarding Entergy VY’s intentions, NRC and DOE authority and oversight, and identifies a unique relationship among the beneficiaries of the comingled decommissioning trust fund.

The Board should reject Entergy VY’s argument that Vermont must assume that the decommissioning trust is adequate for radiological decommissioning and spent fuel management, and that Vermont may not consider a balance of less than zero at the conclusion of those processes.

IV) THE DECOMMISSIONING TRUST FUND IS NOT PERFORMING WELL, AND IS NOT ADEQUATE

Entergy VY’s assertion that the Decommissioning Trust Fund is performing well²⁶ is wrong, as is its assertion that the fund is adequate.²⁷ WRC addressed the adequacy of the fund in its initial brief,²⁸ and stands behind those findings and conclusions with exceptions as listed below.

The fund was obviously not adequate for prompt decommissioning in 2012 and is not adequate today,²⁹ even given the limited site restoration and low-ball budgeting offered by Entergy VY in its Decommissioning Cost Analysis. Although the rate of return on the fund has been robust, if the fund had been “performing well” relative to costs since the purchase of the VY Station in 2002, it would be sufficient to promptly and completely decommission the site today, as was projected by Entergy VY in 2002.³⁰

WRM and other parties have identified significant under budgeting of decommissioning expenses.³¹ For example, if Entergy VY is required to remove all structures as it committed to do in the docket 6545 MOU, the additional costs would be roughly \$100 million. If a conventional property tax is assessed on the spent fuel facility alone, the projected annual cost would likely be in the neighborhood of at least \$1.55 million, which over a 60 year period of SAFSTOR would be about \$93 million. And the Department’s witnesses have concluded that the site restoration budget prepared by TLG Services which estimates \$47 million, should be increased to \$94.0 million (base case) and \$125.8 million (contingent case), even using the same three foot below

²⁵ Docket Nos. 12-707-cv (L) 12-791-cv (XAP), 8/14/13, page 32, line 21. The decision quoted *Bos. Edison v. United States*

²⁶ Docket 7862, Entergy VY initial brief, 8/16/13, page 32

²⁷ Docket 7862, Entergy VY initial brief, 8/16/13, page 29

²⁸ Docket 7862 WRC initial brief, 8/16/13, page 52, Section X (Decommissioning Fund Is Inadequate)

²⁹ Docket 7862, Entergy VY *Proposal for Decision*, 8/16/13, page 148, finding 764: “If the VY Station shuts down, there will not be enough funds in the decommissioning trust to allow prompt decommissioning.”

³⁰ Docket 7862, WRC initial brief, 8/16/13, page 45, findings 88-90

³¹ Docket 7862, WRC initial brief, 8/16/13, pages 52-58

grade structure removal criterion used by Entergy VY,³² which yields a difference of between \$47 million to \$78.8 million. All of these unbudgeted potential expenses if taken together could add more than \$250 million to the cost of decommissioning (primarily the site restoration component) over 60 years.

Entergy VY has also asked the Board to “conclude that costs incurred for Spent Nuclear Fuel (SNF) management will be recovered from the Federal Government,”³³ but full recovery is far from assured. In its initial brief Entergy VY discussed spent fuel management expenses and quoted Entergy VY witness Michael Twomey stating that at trial Entergy VY was awarded \$46,645,454 from DOE for damages through April 30, 2008, but he makes no mention of what its initial claim was. On appeal the award was reduced to approximately \$40 million, a cut of more than \$6 million which represents roughly 13% of the original damage award.³⁴ We understand the previously disallowed expenses may be limited to capital costs, required payments into a Clean Energy Development Fund, construction of a visual barrier, and a flood analysis,³⁵ and we recognize there may be future costs that are similarly rejected. We see the litigation landscape regarding recoverable expenses as unsettled, and reject Entergy VY’s assertion that all or most of the costs for SNF management will be recovered and not absorbed by the Decommissioning Trust Fund. Entergy VY has budgeted as much as \$502.9 million for spent fuel management,³⁶ and if the award for future damages is reduced by 13% the unreimbursed expenses could be as high as \$65 million. While WRC sees this level of unreimbursed expenses as unlikely, prudence requires that the Decommissioning Trust Fund be sufficient to allow for disallowed expenses at this level.

The inadequacy of the Decommissioning Trust Fund has been an important issue throughout this docket, but now gains added urgency because Entergy VY has announced the Station will cease operations and begin drawing from the fund in 2014 rather than 2032, which will limit the ability of the fund to grow through investment return, and will place near-immediate cost pressures on the fund.

WRC urges the Board to require Entergy VY to make additional payments into the existing comingled Decommissioning Trust Fund (or a new segregated trust fund) that will allow the prompt and complete decommissioning (DECON) of the site upon shutdown in 2014 without the use of investment and budgeting gimmicks, or SAFSTOR. WRC believes additional contributions are necessary to allow for prompt and complete decommissioning, which is itself necessary to serve the orderly development of the region. Entergy Corporation is not likely to be unfairly disadvantaged by a requirement to add to the fund because it is expecting cash flow to

³² Docket 7862 DPS initial brief, 8/16/13, page 86, citing Brewer & Maret PFT with corrections and clarifications of August 1, 2013. See also Docket 7862 Entergy VY initial brief, page 35, citing Brewer & Maret uncorrected testimony.

³³ Docket 7862, Entergy VY initial brief, 8/16/13, page 40; Entergy VY *Proposal for Decision*, finding 744, 753

³⁴ Docket 7862, Entergy VY initial brief, 8/16/13, page 39; Docket 7862, PWT, 6/29/12, Twomey, page 19, line 9

³⁵ Docket 7862, PWT, 6/29/12, Twomey, page 19, line 15 and footnote 5

³⁶ Docket 7862, EN-TLG-2, Decommissioning Cost Analysis, February 2012, page xix, scenario 2, cessation of operations in 2012, spent fuel off site in 2082.

“increase approximately \$150 to \$200 million in total through 2017, compared to Vermont Yankee’s continued operation.”³⁷

WRC recommends the Board require funding for all reasonably anticipated expenses, and consider the following options to assure the adequacy of the Decommissioning Trust Fund to fully remediate the site beginning on the day the Station shuts down:³⁸

a) Entergy VY should make additional retroactive contributions to the Decommissioning Trust Fund at the same rate VYNPC was contributing to the fund prior to the 2002 sale³⁹

In the WRC docket 7862 initial brief we outlined a plan that would use future payments to make the decommissioning fund whole with an assumption that the Station would operate long enough to allow sufficient contributions. The decision by Entergy VY to cease operation in 2014 makes full funding of the Decommissioning Trust Fund far more urgent, and causes us to recommend a retrospective based approach we offered in docket 7440.

When Entergy VY purchased the VY Station it assumed all obligations for decommissioning. Until that point the previous owner, Vermont Yankee Nuclear Power Corporation (VYNPC), included \$11.4 million in its annual operating costs to fund the eventual decommissioning,⁴⁰ but Entergy VY asserted that after the sale such contributions would no longer be necessary. The decision of the Board in docket 6545 recognizes the commitment of Entergy VY to make the fund whole, should that be necessary, as a positive aspect of the sale:

“(2) Discussion: Decommissioning
Ratepayers have made significant contributions, and are currently being charged costs, to fund the eventual decommissioning of Vermont Yankee. VYNPC estimates that decommissioning in 2012 will cost \$621 million (in 2001 dollars). The present fund balance of approximately \$304M would be inadequate to pay for complete dismantlement. In order to bridge the gap and assure adequate funding for decommissioning in 2012, VYNPC plans to collect \$19–23M per year as a portion of its FERC-approved rates to build the fund. Under the proposed sale to ENVY, ratepayers no longer have this obligation; instead, ENVY would be responsible for any needed decommissioning contributions and could not pass them on to ratepayers.”⁴¹ (Emphasis added)

...

³⁷ Docket 7862, WRC-X; Entergy Corporation press release, August 27, 2013, page 3

³⁸ In the Docket 7862 WRC initial brief we recommended the Board establish a segregated trust fund, and that excess funds contributed by Entergy VY should be returned to Entergy VY without a sharing provision (finding 147 and pages 59-60).

³⁹ This section is repeated from the WRC docket 7440 reply brief dated 8/7/09, pages 15-17. The WRC docket 7440 reply brief was attached in its entirety to the WRC docket 7862 initial brief.

⁴⁰ Docket 6545, Board Order, 6/13/02, page 34

⁴¹ Docket 6545, Board Order, 6/13/02, page 63-64

“It is important to recognize that we find a reasonable possibility that decommissioning fund contributions would be lower than presently expected under continued ownership. But, it is also possible that costs could increase, or that fund growth would be insufficient. When we weigh the financial savings that may result from lower decommissioning fund contributions, we must consider that these savings are a potential benefit under current ownership. By contrast, the sale to ENVY provides the actual elimination of all ratepayer contributions. Indeed, ENVY's commitment to make whole any future deficiencies in necessary decommissioning monies — whether caused by technology changes, lower fund investment returns, or NRC regulatory changes — is a very positive aspect of the proposal before us.”⁴² (Emphasis added)

...

“(5) The Use of Decommissioning Trust Funds

We carefully considered two dangers in this area: (1) the risk that there might be insufficient funds for proper decommissioning; and (2) the risk that Vermont ratepayers might turn out to have contributed more than necessary to the relevant Decommissioning Trust Fund. As to the first risk, the record shows that the fund is likely to be deficient (not excess) if decommissioning takes place before the end of Vermont Yankee's license term in 2012. However, Entergy has committed sufficient funds to make whole any such deficiency. Indeed, transferring that obligation from Vermont utilities to Entergy is a significant benefit of the current proposal.”⁴³ (Emphasis added)

...

“We also note that our concern over the appropriate decommissioning incentives only addressed the potential situation in which ENVY had an excess in the decommissioning fund. If the fund proves to be insufficient, ENVY may need to make additional contributions to the fund.”⁴⁴ (Emphasis added)

WRC believes that at the time of purchase the petitioners accepted all risks that the decommissioning fund might be insufficient, and made a commitment to make that fund whole, should it become necessary. SAFSTOR was recognized as an option to deal with a premature shutdown prior to 2012 or unexpected occurrences, but was not accepted by the Board as a de facto means of making the fund whole. Indeed, the Board recognized that “SAFSTOR should not be seen as a panacea for funding decommissioning,”⁴⁵ which is exactly what Entergy VY is now proposing.

We are concerned that the petitioners sought approval to purchase the plant, and the Board granted that authorization, under the assumption that full funding of decommissioning in 2012 was more likely to occur under Entergy VY's ownership than continued ownership by the utility

⁴² Docket 6545, Board Order, 6/13/02, page 65-66

⁴³ Docket 6545, Board Order, 6/13/02, page 151-152

⁴⁴ Docket 6545, Board Order re: *Petition for Temporary Restraining Order and Preliminary Injunction*, 7/26/02, page 10

⁴⁵ Docket 6545, Board Order, 6/13/02, page 65

consortium, but given Entergy VY's decision to cease funding the decommissioning trust, the exact opposite appears to be true. We believe the Board should require funding of the decommissioning trust to at least the levels that would have been provided under prior ownership.

The Station has been operating under Entergy VY's stewardship since 2002, and is expected to continue operating until late 2014. Had Entergy VY been making contributions to the decommissioning trust through the 14 years of Entergy VY ownership at the same rate as VYNPC, the annual \$11.4 million contributions would yield an addition to the fund balance (excluding investment return) of roughly \$159 million. WRC urges the Board to consider a payment (or partial payment) to make the fund whole and to correct for Entergy VY's 2002 misguided assertion that the fund would be sufficient without any further contributions.

b) Entergy VY should make an additional payment to the Decommissioning Trust Fund in lieu of a PPA benefit for operations from March 21, 2012 until the time of closure

The docket 7862 WRC initial brief included a recommendation that in order to serve the general good "the Board should identify the benefits derived from PPA's and RSA's in prior dockets, and require comparable value be delivered through any new or amended CPG."⁴⁶ WRC offered findings and discussion that estimated a value for the prior PPA, and calculated the future value based on an additional 20 years of operation (findings, pages 26-27). We offered the following discussion:

"It is reasonable to calculate an annual value of the PPA established in docket 6545 based on the projected total value in 2002 and the projected total value in 2006. While a more accurate value could be calculated from the actual cost of electricity sales during the period from 2002 through 2012, there is insufficient testimony from which to make any such determination. Therefore, the Board is encouraged to use a combined average of the projected PPA benefit as calculated in dockets 6545 and 7082 as a starting point, and then adjust for inflation and its own regulatory experience. Based on the two available data points, it is reasonable to calculate a minimum value of the docket 6545 PPA as \$16 million per year, which would represent \$320 million over the 20-year period of operations contemplated in this docket."⁴⁷

The Station has been operating without CPG authorization, and without a PPA since March 21, 2012, and is expected to continue operating through at least October, 2014. Rather than calculate the value of the PPA based on Entergy VY's requested 20 years of future operations as we did in our initial brief, WRC now recommends that the Board calculate the value based on the 2-1/2

⁴⁶ Docket 7862, WRC initial brief, 8/16/13, page 26, heading of Section III

⁴⁷ Docket 7862, WRC initial brief, 8/16/13, page 28

years since March 21, 2012 that the plant will have been operating at the time of the projected shutdown.

WRC urges the Board to recognize that in lieu of an ongoing PPA Entergy VY should provide new value equivalent to at least \$40 million in 2002 dollars (\$16 million times 2-1/2 years), rather than \$320 million. This is value that was required prior to 2012 to meet the standard of the general good in docket 6545 and should be required here too, in spite of Entergy VY's reluctance to enter into a viable PPA or to offer comparable value in another form.

c) Entergy VY should make an additional payment to the Decommissioning Trust Fund to cover all the costs of storing the fuel added in a refueling outage that concluded in April 2013

In the WRC docket 7862 initial brief we urged the Board to require Entergy VY to make a one-time payment to the Decommissioning Trust Fund in the amount of \$30 million to cover the cost of management of all the spent fuel to be consumed between March 21, 2012 and March 21, 2032.⁴⁸ Entergy VY has since stated that it intends to cease operation at the end of the current fuel cycle in the fourth quarter of 2014. WRC thus modifies its requested relief and now asks the Board to require Entergy VY to cover all the costs associated with fuel added between March 21, 2012 and December 31, 2014.

As discussed earlier and in the initial brief of WRC, Entergy VY lacked Board authority to operate after March 21, 2012, but nevertheless Entergy VY continued to operate. A refueling outage took place in early 2013 in which 120 assemblies were added to the spent fuel storage pool. The cost for storage of this fuel should be borne entirely by Entergy VY, and paid through operating funds rather than the decommissioning trust.

A full core holds 368 assemblies, and approximately 1/3 of the core is replaced in a typical outage.⁴⁹ At the end of 2012 Entergy VY had 2,507 assemblies in the spent fuel pool, and 884 assemblies in casks on the Interim Spent Fuel Storage Installation (ISFSI). At the end of 2013 Entergy VY had 2,627 assemblies in the pool and 884 assemblies in casks on the ISFSI.⁵⁰ Based on this data, WRC has calculated that at the end of 2012 Entergy VY had 3,759 assemblies under management, and at the end of 2013 Entergy VY had 3,879 assemblies under management, including those in the core itself. Thus, the refueling outage that occurred in early 2013 added 120 assemblies to those under management. Each cask holds 68 assemblies⁵¹ and costs approximately \$880,000.⁵² An ISFSI to hold 80 casks will cost \$24 million,⁵³ which is approximately \$300,000 per cask on a prorated basis.

⁴⁸ Docket 7862, initial brief of WRC, 8/16/13, Section VI, page 35-38

⁴⁹ Docket 1:11-cv-99-jgm, Testimony of Mr. Herron as quoted in *Memorandum and Order on Plaintiffs' Motion for a Preliminary Injunction*, United States District Court for the District of Vermont, 7/18/11, page 8.

⁵⁰ Docket 7862, WRC-Cross-18

⁵¹ Docket 7862, initial brief of WRC, 8/16/13, page 36, finding 45

⁵² Docket 7862, initial brief of WRC, 8/16/13, page 36, finding 51

⁵³ Docket 7862, initial brief of WRC, 8/16/13, page 36, finding 51

Based on the above data, the fuel added to the pool in 2013 will require two storage casks and space on a new ISFSI, which will cost approximately \$2,360,000 in total, not including the prorated cost of security and oversight required to protect this fuel. Therefore, WRC asks the Board to require a one-time payment to the Decommissioning Trust Fund of at least \$2.36 million (rather than \$30 million), and to recognize the new data cited above as additional findings.

d) Entergy VY should make a one-time payment to the Decommissioning Trust Fund to cover the cost of movement of one-half of the spent fuel from wet to dry storage

WRC stands by its request that the Board require Entergy VY to move at least one-half of the fuel in wet storage to dry storage while the Station is operating, or alternatively add comparable value to the Decommissioning Trust Fund. WRC calculated this cost in the docket 7862 initial brief and concluded the needed value is \$17.6 million, excluding the prorated share of the \$24 million ISFSI and related service support.⁵⁴ This value does not include the 368 assemblies that are in the active core.

e) Entergy VY should be held responsible for all costs associated with a second ISFSI, and those costs should be paid through the operating budget and not deferred for payment by the Decommissioning Trust Fund

WRC stands by its request that the Board require Entergy VY to identify a location for a second ISFSI, and that payment for constructing a second ISFSI should come from the current operating budget, not the decommissioning fund.⁵⁵

When the Station ceases operations in 2014 it will have 3,879 assemblies under management and will require an ISFSI to accommodate at least 57 casks.⁵⁶ The existing ISFSI will only

⁵⁴ Docket 7862, initial brief of WRC, 8/16/13, page 35-38; This matter was addressed in the docket 7862 April 17, 2013 *WRC Motion to Require Entergy Nuclear Vermont Yankee and Entergy Nuclear operations to File an Amended Spent Fuel Management Plan*, including a request that the Board “At the conclusion of docket 7862 require Entergy VY to reduce the density of the spent fuel pool, or alternatively, order Entergy VY to make a payment into the Decommissioning Fund in lieu of the actual movement of fuel” (page 4). The Board ruled the *Motion Seeking an Amended Spent Fuel Management Plan* moot, but did not address the additional relief requested at the conclusion of the docket (TR 6/17/13 Vol I, Page 7, Ln 2)

⁵⁵ Docket 7862, WRC initial brief, 8/16/13, pages 33-35

⁵⁶ See docket 7862 WRC reply brief, section IV(c), at the end of 2013 Entergy VY had 2,627 assemblies in the pool, 884 in casks, and 368 in the core. Each cask holds 68 assemblies. An unknown number of additional casks will be required for some of the radiological waste classified as GTCC; See also Docket 7862, PSD-Cross-WC-15, PSDAR, page 9, which expects 3,879 assemblies to be generated by the VYNPS, assuming uprate power levels, through late 2014.

accommodate 36 casks.⁵⁷ As we argued in our initial brief, Entergy VY has acknowledged need for a second ISFSI and has identified the cost as approximately \$24 million.⁵⁸

In docket 7082 the Board required that if Entergy VY sought an extension of its CPG beyond March 21, 2012 it must consider the possibility of constructing an additional ISFSI,⁵⁹ and the need for a second ISFSI is clearly apparent whether or not a new or amended CPG is granted.

Delaying the construction of a second ISFSI effectively delays the point at which the expense becomes due, and may defer the cost from Entergy VY's operating budget to the Decommissioning Trust Fund. The Board should not allow Entergy VY to defer this expense and should instead assure that none of the costs associated with a second ISFSI will be charged to the Decommissioning Trust Fund, or alternately require a one-time payment of \$24 million to the Decommissioning Trust Fund to cover the costs of constructing the additional ISFSI.

V) **THE BOARD SHOULD REQUIRE PROMPT DECOMMISSIONING AND PROHIBIT THE USE OF SAFSTOR AS CONDITIONS OF A CPG IF ONE IS OFFERED**

In its initial brief Entergy VY stated that:

“While a significant amount of testimony and technical hearing time was devoted to the question of decommissioning, that topic was never linked to the ultimate issue in this docket: whether the Board should grant a CPG approving continued operation of the VY Station.”⁶⁰

This assertion ignores WRC's long and consistent advocacy with regard to prompt and complete decommissioning. While WRC has not linked decommissioning to *approval or denial* of a CPG, we have absolutely advocated for prompt and complete decommissioning and full funding of the decommissioning trust as essential to the orderly development of the region, and have established prompt and complete decommissioning as conditions that the Board should apply to any CPG if one is offered.⁶¹

WRC has been involved in the Vermont Yankee CPG process since 2007. On May 23, 2013 WRC filed a Motion asking the Board to take notice of our previously filed recommendations,⁶²

⁵⁷ Docket 7862, EN-TLG-2, Decommissioning Cost Analysis, February 2012, Section 3, page 7

⁵⁸ Docket 7862, WRC initial brief, 8/16/13, page 36, finding 51; TR, 2/12/13, Vol. I, Cloutier, page 114, line 9 through page 115 line 20; WRC-Cross-3

⁵⁹ Docket 7862, WRC initial brief, 8/16/13, page 33, finding 37; Docket 7082, Board Order 4/26/06, page 81-82

⁶⁰ Docket 7862, Entergy VY initial brief, 8/16/13, page 29, see also page 2: “No party has connected the issue of non-radiological decommissioning to the question of continued operation.”

⁶¹ Docket 7862, WRC initial brief, 8/16/13, findings and discussion beginning on page 44; conclusions page 62 (#8)

⁶² Docket 7862, WRC Motion To Take Notice Of Certain Documents And To Admit Certain Other Documents, 5/23/13.

including multiple recommendations that relate to prompt and complete decommissioning in dockets 7440 and 7600, and in our *Response to Entergy VY's Motion Pursuant to Vermont Rule of Civil Procedure 60(b)*.⁶³ Entergy VY opposed the *Motion to Take Notice*,⁶⁴ and the Board ultimately denied the motion.⁶⁵ Nevertheless, Entergy VY is well aware of the consistent recommendations WRC has made in dockets 7440 and 7600, including recommendations that link prompt and complete decommissioning to the issuance of a new or amended CPG. At the very beginning of this docket WRC even cited our differences with the Public Service Department over prompt and complete decommissioning as a matter for the Board to consider.⁶⁶ Our position has been clear and consistent.

WRG expects that Entergy VY and other parties will disagree with some of our arguments and recommendations in this and other dockets, but it is troubling that Entergy VY continues to ignore the direct connection WRC has made between decommissioning and conditions associated with any CPG the Board may issue.

Given Entergy VY's apparent failure to recognize arguments and recommendations regarding prompt and complete decommissioning as they relate to the issuance of a CPG, WRC will identify selected benefits of prompt decommissioning over SAFSTOR (below), and once again asks the Board to include prompt and complete decommissioning as conditions of any CPG necessary to serve the orderly development of the region, and to apply these conditions retroactively to March 21, 2012.

a) Prompt decommissioning provides greater certainty and less risk, both technically and financially

A contemporary proverb tells us "Never put off to tomorrow what you can do to-day." This thought probably originated in ancient times, but the quote is most often attributed to Thomas Jefferson who included it in a list sent to his granddaughter Cornelia Jefferson Randolph, and then in his "*decalogue of canons for observation in practical life*" provided in a letter to Thomas Jefferson Smith in 1825.⁶⁷ Waiting for the Decommissioning Trust Fund to grow through speculative return on investment offers no assurance that what we should do today, can be done tomorrow.

⁶³ WRC filed its Response to *Entergy VY Motion Pursuant To Vermont Rule Of Civil Procedure 60(b)* in dockets 6545 and 7082 on June 13, 2012. Please see page 9, recommendation 3. The Board responded to the Entergy VY Motion on November 29, 2012 (*Order re: Motion to Amend*), and included the Order in docket 7440.

⁶⁴ Docket 7862, *Entergy VY's Response to Windham Regional Commission's Motion To Take Notice*, 6/10/13

⁶⁵ Docket 7862, *Order re: Windham Regional Commission's Motion to Take Notice of Prior Filings*, 6/18/13

⁶⁶ Docket 7862 *Notice of Appearance and Motion to Intervene*, 6/14/12

⁶⁷ <http://www.monticello.org/site/jefferson/canons-conduct> (last checked 10/21/13)

If adequate funding is made available the Vermont Yankee Station can be promptly and completely decommissioned when it shuts down. If we wait through a period of SAFSTOR costs might rise faster than fund growth, and indeed the fund could lose value. The potential for loss of fund value would be exacerbated if the Station ceased operation during a period of economic uncertainty or near the bottom of a falling investment market. Other challenges may occur, including regulatory changes that increase costs or restrict waste disposal.⁶⁸ One of the related concerns is that Entergy VY is budgeting and planning to send most of its radiological waste to the Waste Control Specialists (WCS) site in Andrews, Texas, under the authority of the Texas Compact, but the WCS site has a date-limited license with no assurance of renewal.⁶⁹ And there is no assurance that the corporate entities with responsibility to fund decommissioning will exist long in the future, or that existing corporate financial guarantees will have any value decades from now.

“Weighing the advantages and disadvantages of DECON and SAFSTOR, DECON is the preferable approach because it provides greater certainty and less risk, both technically and financially.”⁷⁰

Under present day conditions it is possible to require the two direct certificate holders (ENO and ENVY) to fully fund and promptly complete decommissioning and site restoration, and it may be possible to require the corporate parent, Entergy Corporation, to do so as well. There is no assurance that any of these corporate entities will exist in the future, and no testimony describes how decommissioning and site restoration can be paid for if the owners and operators either do not exist or have insufficient funds at the end of the NRC allowed SAFSTOR period. While Entergy VY asserts that the NRC could conceivably require Entergy Corporation to fund radiological decommissioning, and corporate guarantees backstop at least part of the decommissioning obligation, testimony does not address how funding would be provided if the owning entities are bankrupt or do not exist at the time of proposed decommissioning.⁷¹ And in any event the NRC does not require or regulate site restoration, nor does there appear to be any mechanism for the NRC to require funding for site restoration.⁷²

⁶⁸ Docket 7862, PWT, 10/22/12, Brewer, page 5, line 7

⁶⁹ The WCS site is licensed under Texas Health and Safety Code, Title 2, §401.202, with a 15 year term for its initial license and ten year terms available (but not assured) in the future as defined by Texas Health and Safety Code, Title 2, § 401.222. The Board should consider the uncertainty presented by the Texas licensing terms. See: http://www.weblaws.org/texas/laws/tex_health_and_safety_code_section_401.202_licensing_authority (last checked on 10/21/13)

⁷⁰ Docket 7862, PWT, 10/22/12, Brewer, page 4, line 22; WRC initial brief, 8/16/13, finding 93

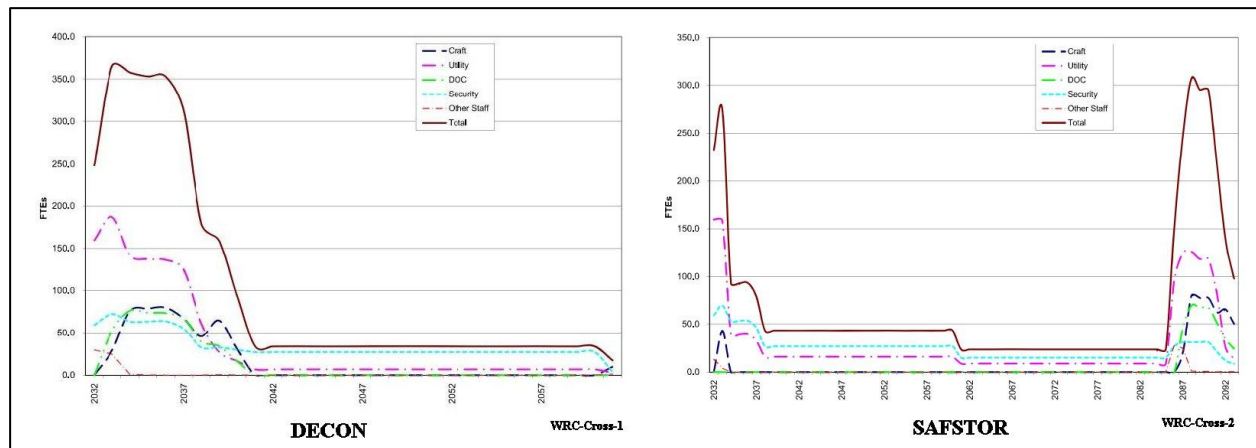
⁷¹ Docket 7862, TR, 02/19/13, Vol. 1, page 63, discussion between Mr. Dudley and Mr. Twomey; TR 6/18/13, Vol. I, page 93, discussion between Mr. Young and Mr. Twomey

⁷² Docket 7862, TR, 02/12/13, Vol. II, page 14, line 9, discussion between Mr. Buchanan/Chairman Volz and Mr. Cloutier; TR, 2/12/13, Vol. I, page 60, line 23, conversation between Ms. Ellsworth and Mr. Cloutier

Prompt decommissioning, on the other hand, provides greater assurance that the corporate entities responsible for the operation of the VY Station will exist at the time of decommissioning, and that they can be held responsible for all phases of remediation including the completion of site restoration to Vermont standards.

b) Prompt decommissioning provides a better economic profile and is necessary for the orderly development of the region

When the Station shuts down the workforce will shrink from roughly 620 to about 250 over a 9-12 month period.⁷³ With SAFSTOR, the workforce would quickly drop further to about 50 people,⁷⁴ and if past residency ratios hold true only about 20 of those workers would live in Vermont.⁷⁵ With prompt decommissioning the Station initially employs a larger workforce, which then dissipates more slowly over approximately ten years.⁷⁶ The economic impact studies provided by Entergy VY suggest that DECON provides a stronger buffer against overall job loss than SAFSTOR.⁷⁷



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While not all of the current plant employees will be engaged directly in decommissioning activities, at least some will be, and new jobs will likely become available to other local workers. The decommissioning budget prepared by TLG is based on labor contracts at the site and assumes the use of local labor for most decommissioning activity.⁷⁹ Using local labor when

⁷³ Docket 7862, WRC initial brief, 8/16/13, page 46, finding 96; TR 2/12/13, Vol. I, Cloutier, page 109, line 1

⁷⁴ Docket 7862, WRC initial brief, 8/16/13, page 46, finding 97; WRC-Cross-2

⁷⁵ Docket 7862, WRC-Cross-36, approximately 40% of the current workforce resides in Vermont

⁷⁶ Docket 7862, WRC initial brief, 8/16/13, page 46, finding 98; WRC-Cross-2

⁷⁷ Docket 7862, WRC initial brief, 8/16/13, page 46, finding 99; WRC-Cross-35, page 9

⁷⁸ Docket 7862 WRC-Cross-1 and WRC-Cross-2 are discovery responses provided by Entergy VY that describe employment levels. The DECON graphic is of scenario 3, and assumes the Station shuts down in 2032 with fuel removed by 2060. The SAFSTOR graphic is of scenario 5, and assumes the Station shuts down in 2032 with spent fuel removed by 2060, and the site restored by 2092 (60 years after shutdown).

⁷⁹ Docket 7862, TR, 6/17/13, Vol. I, Cloutier, page 68, line 3; page 69, line 21

possible is less expensive than bringing in outside labor and makes sense from a cost standpoint.⁸⁰ The more gradual falloff of economic activity associated with DECON offers the region many benefits, including social, economic, and fiscal. And a more gradual exodus of workers would allow the real estate market to absorb houses available for sale, which in turn affects the inventory, price, appraised value, and the property tax of community homes.⁸¹

Vermont Yankee is situated on 148 acres of prime industrial real estate with access to road, river, rail, and power infrastructure. Prompt decommissioning returns much of the valuable site to productive use sooner, while the use of SAFSTOR delays the point at which any part of the site can be returned to productive commercial use.⁸² Although WRC recognizes that the entire site will not be available for redevelopment while spent fuel remains on the premises, it is possible that the Department of Energy would favor removal of spent fuel from decommissioned sites before SAFSTOR sites, which would effectively return the entire site to productive use sooner, and adds even greater economic value to prompt decommissioning.

c) Prompt decommissioning provides access to a workforce with critical legacy knowledge

Prompt decommissioning provides access to a workforce with legacy knowledge of the Station, its construction, and its history, which can be an advantage. That legacy knowledge may expedite the decommissioning and remediation processes and reduce costs.

Vermont Yankee was constructed in the late 1960's and early 1970's, and it is reasonable to assume some of the original construction workers remain available to assist in developing site specific decommissioning plans and implementing associated strategies. Likewise, many of the Station's current workers have been at the Vermont Yankee for decades (some since the Station began operations) and have important knowledge of plant structures and operations that will improve the quality of decommissioning and reduce costs. It is unreasonable to assume these workers and former workers will be available to assist with decommissioning activity at the end an extended dormancy period.

d) Prompt decommissioning is less expensive

In every scenario pairing offered by TLG Services, prompt decommissioning is less expensive than the use of SAFSTOR. As an example, the 2012 Decommissioning Cost Analysis compares the total cost of scenarios 3 (DECON) and 5 (SAFSTOR), for cessation of operations in 2032 with spent fuel removed from the site in 2060.⁸³ The DECON option has a cost of \$845,422,000,

⁸⁰ Docket 7862, TR, 6/17/13, Vol. I, Cloutier, page 68, line 16; page 69, line 17

⁸¹ Docket 7862, WRC-Cross-35, *Resiliency Action Plan*, pages 10-11

⁸² Docket 7862, WRC initial brief, 8/16/13, findings 87, 94-95

⁸³ Docket 7862, EN-TLG-2, pages xvii and xix; section 6, pages 4 and 5

and the SAFSTOR option has a cost of \$969,883,000. While a SAFSTOR option requires ongoing management and security costs throughout the period of dormancy, a DECON option eliminates these costs and offers the possibility that the site can be redeveloped and will instead deliver higher property tax value to the municipality and state much sooner.

e) Prompt decommissioning produces less radiological waste (or an equal volume of waste), and there is greater assurance of the availability of appropriate waste disposal and transportation infrastructure

There has been considerable testimony about the volume of radiological waste that will result from decommissioning, and how that waste will be disposed of. Under most analyses the volume of radiological waste is the same or less with DECON than with SAFSTOR.

The 2007 Decommissioning Cost Analysis shows total class A,B,C,GTCC⁸⁴ radiological waste of 331,871 cubic feet using the DECON option, and 348,387 cubic feet using the SAFSTOR option.⁸⁵

The 2012 Decommissioning Cost Analysis shows total class A,B,C,GTCC radiological waste of 653,060 cubic feet using the DECON option, and 669,899 cubic feet using the SAFSTOR option. While the difference is slight, there is a greater volume of radiological waste (although of lower mass) using the SAFSTOR option than DECON.⁸⁶

TLG Services, a subsidiary of Entergy Corporation, prepared a Decommissioning Cost Analysis for VYNPC in 2001 that offered textual detail about radiological waste volume and the costs of managing the waste through DECON and SAFSTOR, which makes clear that SAFSTOR cannot be relied upon to reduce the volume of radiological waste:

“Variations in the length of the dormancy period are expected to have little effect upon the quantities of radioactive wastes generated from system and structure removal operations. While there will be a decrease in the contamination levels present on all surfaces due to radioactive decay over an increased dormancy duration, it is not expected that any material that is non-releasable at the time of shutdown will decay to a releasable state over the permissible time frame, i.e., 60 years maximum. It is not possible to make any further assumptions concerning contamination levels without detailed characterization information.

⁸⁴ Waste is classified according to the requirements as delineated in Title 10 CFR, Part 61.55. Class A is the lowest level followed by B and C. The highest level of waste is classified as Greater Than Class C (GTCC).

⁸⁵ Docket 7862, PSD-Cross-16, Section 5, page 3, comparing scenario 3 and 7 (shutdown in 2012 and fuel removed by 2082)

⁸⁶ Docket 7862, EN-TLG-2, Section 5, pages 7-8

Given the levels of radioactivity and spectrum of radionuclides expected from thirty to forty years of plant operation, no plant process system identified as being contaminated upon final shutdown will become releasable due to the decay period alone, i.e., there is no significant reduction in waste volume in delaying decommissioning. In fact, SAFSTOR estimates can show a slight increase in the total projected waste volume, due primarily to initial preparation activities for placing the unit in safe-storage, as well as from follow-up housekeeping tasks over the caretaking period for the station.⁸⁷ (Emphasis added)

Subsequent Decommissioning Cost Analyses prepared by TLG Services for Entergy VY eliminated most of the textual description of radiological waste decay, but even the reports dated January 2007 and February 2012 include a telling statement:

“No process system containing/handling radioactive substances at shutdown is presumed to meet material release criteria by decay alone (i.e., systems radioactive at shutdown are [*sic*] still be radioactive over the time period during which the decommissioning is accomplished, due to the presence of long-lived radionuclides).”⁸⁸

For most of the radiological waste, disposal is assumed to be handled through the Texas Compact. This mandatory agreement between Texas and Vermont provides some assurance that there will be adequate space at the Waste Control Specialists (WCS) facility in Texas to dispose of the waste, at least in the near term, and requires that Vermont’s radiological waste flow to the Texas facility unless waived by the Texas Compact Commission.⁸⁹ Disposal may not be assured long in the future both because the needed space may have been yielded to another generator, and the ever-present political pressures may limit the operation of the WCS facility itself. Prompt decommissioning provides greater assurance that space for disposal of radiological waste will be available through the Texas Compact.

In the 2012 Decommissioning Cost Analysis Entergy VY takes significant liberty with planned disposal of the class “A” waste (the lowest level) by assuming that some of this waste will be releasable to off-site recycling vendors, rather than disposed of through the Texas Compact. Entergy VY has not provided any evidence that it has the needed authorization to export this

⁸⁷ Docket 7862, PSD-Cross-12, Decommissioning Cost Analysis, September 2001, Section 2, pages 15-16

⁸⁸ Docket 7862, PSD-Cross-16, Decommissioning Cost Analysis, January 2007, Section 5, page 1; EN-TLG-2, Decommissioning Cost Analysis, February 2012, Section 5, page 2.

⁸⁹ The Texas Compact is regulated by 10 V.S.A., Chapter 162. The Compact is ratified and copied in 10 V.S.A. §7069. The requirement to dispose of Vermont waste within the compact is contained in Section 402, and the ability to petition for a waiver is contained in Section 305(7). The Waste Control Specialists (WCS) site is licensed by the Texas Commission on Environmental Quality under the Texas Health and Safety Code, Texas Title 2, §401.202. The initial term of the WCS license is limited to 15 years (Title 2, § 401.222), subsequent terms are for 10 years. See: http://www.weblaws.org/texas/laws/tex_health_and_safety_code_section_401.202_licensing_authority (last checked 10/21/13). The Board should be aware of the limited license terms offered to the WCS site.

very low level waste from the Texas Compact, and absent approval it must be assumed that all waste will be treated as radiologically contaminated and shipped to the Texas facility for burial purposes⁹⁰.

Finally, the radiological waste must be shipped from the Vermont Yankee site to the Texas facility, or wherever it is ultimately disposed. At the present time an operational rail line passes alongside the Vermont Yankee site, which provides a simple and economical method of transporting bulk radiological waste. There is no assurance that the rail line, or any other economical bulk transportation provider, will be available at the conclusion of a SAFSTOR period long in the future.

f) Prompt decommissioning reduces regulatory costs and eases the burden of ongoing emergency management sooner

When the Station is operating it requires significant oversight by the state government, including direct oversight by an on-premises state nuclear engineer, and considerable monitoring of on and off-site radiological levels by the Vermont Department of Health. There is also a high demand placed on emergency planners, and regular drills are required of professional and volunteer emergency responders.

Even when the Station ceases operations, oversight will continue to be provided by the Vermont Public Service Department and the Vermont Department of Health, and public emergency services will continue to be provided. And the site will most likely remain under the jurisdiction of the PSB until it has been fully decommissioned, the site has been completely restored, and any remainder in the Decommissioning Trust Fund has been disbursed. Promptly decommissioning the Station will reduce the need for regulatory monitoring, and ease the demand on emergency responders. Likewise, prompt decommissioning and site restoration will reduce the need for ongoing PSB oversight, and bring decades of litigation and contentious public discourse to an end.

There will be a continuing need for some oversight and emergency preparedness as long as spent fuel remains on the site, but the total footprint of a spent fuel storage facility is small relative to the entirety of the existing Vermont Yankee Nuclear Station. Likewise, emergency planning related to an air cooled spent fuel storage facility composed primarily of concrete, is much less complex than planning for any contingency (radiological or non-radiological) in a sprawling nuclear generation station secured in SAFSTOR. And it is possible that the Department of Energy will prioritize the removal of spent fuel from decommissioned sites before plants that remain in SAFSTOR, which would allow for accelerated final site restoration and terminate the need for state oversight of the spent fuel storage facility entirely.

⁹⁰ Docket 7862, DPS initial brief, 8/16/13, page 79, findings 212-214

Prompt decommissioning will effectively save the State of Vermont economic and other resources, and will allow the state, region, and host municipality to place distance between the contentious protests of the present day, and future redevelopment of the property.

g) SAFSTOR does not offer sufficient benefits

Entergy VY has stated that it intends to use the SAFSTOR option,⁹¹ and on October 2, 2013 publically stated that “SAFSTOR has three principal benefits: (1) it allows decommissioning to be accomplished with less risk to workers since radioactivity levels naturally decline over time, (2) it may result in reduced volumes of radioactive waste that must be disposed of, and (3) it allows decommissioning funds to grow.”⁹² Although this statement is not in the docket 7862 record, it provides a good overview of the very limited benefits of SAFSTOR, and the suggested benefits of SAFSTOR should be considered by the Board within that context.

Entergy VY’s first argument is curious. The company has spent many years asserting that decommissioning must be conducted under NRC regulations, and those regulations protect workers and the public from excessive radiological risk. Yet Entergy VY is now suggesting that once the Station shuts down NRC regulations may not provide adequate worker protection under the DECON scenario.

The 2001 Decommissioning Cost Analysis prepared by TLG Services for VYNPC discussed worker exposure levels in DECON and SAFSTOR, and identified SAFSTOR as offering lower radiation fields with a benefit that “some of the dismantling activities may employ manual techniques rather than remote procedures. Thus dismantling operations may be simplified for some tasks.”⁹³ There is no doubt that SAFSTOR allows for some radiological decay and that occupational exposure is reduced, but the nuclear industry has used the DECON option many times and has developed methods to meet NRC standards that provide worker protection within acceptable levels of risk. And of course the workers employed in the critical elements of the DECON process will likely be professionals who are experienced at working in areas with high radiation fields. Entergy VY has successfully argued that the NRC provides adequate workplace safety protections while the Station is operating, and has offered no evidence that this is not true after shutdown. Although the Board is prohibited from considering nuclear safety, the hollowness of this lead argument is worthy of note.

⁹¹ Docket 7862, WRC-X; PSD-WC-Cross-15, PSDAR, page 4

⁹² PowerPoint presentation of Michael Twomey to the Texas Compact Commission, October 2, 2013. Presentation slide number 2 from the Burlington Free Press web site at: <http://blogs.burlingtonfreepress.com/politics/2013/10/03/entergys-presentation-to-the-waste-commission/> (Last checked on 10/21/13).

⁹³ Docket 7862, PSD-Cross-12, Decommissioning Cost Analysis, September 2001, Section 2, page 16

Entergy VY's second argument in favor of SAFSTOR is that it may result in reduced volumes of radioactive waste. Here the word "may" is telling. As identified above, the total volume of radiological waste is generally not reduced through a period of SAFSTOR, and in some scenarios it can actually increase. The long period of decay does shift some radiological debris from higher to lower categories of waste which can reduce disposal costs, but record evidence clearly shows that time alone will not significantly reduce volume.

Entergy VY's third argument in favor of SAFSTOR is that it allows the decommissioning fund to grow. While some growth of the fund is likely, there is no assurance that the fund will grow faster than expenses or inflation, and under some scenarios it could catastrophically lose real value, which would become especially acute if the Station ceases operations during a downturn of the financial markets. Entergy VY's assertion otherwise is based on optimistic accounting, but is meaningless without an iron clad guarantee of adequate fund growth, which Entergy VY is unable to provide.

WRC has spent six years developing recommendations that unequivocally favor prompt and complete decommissioning. None of the arguments advanced by Entergy VY in favor of SAFSTOR are new to us, or to the Board, and they all pale in comparison to the benefits of prompt and complete decommissioning.

VI) THE BOARD SHOULD RECONSIDER THE DOCKET 6545 SHARING PROVISION, AND SHOULD PROHIBIT ANY DELAY BETWEEN RADIOLOGICAL DECOMMISSIONING AND SITE RESTORATION

WRC drew attention to the Decommissioning Trust Fund sharing provision in section III of this reply brief. We argued that Entergy VY could conceivably choose to leave the Station in SAFSTOR even if the Decommissioning Trust Fund grows through investment return and becomes adequate to fully decommission the site, and Entergy VY might be tempted to do so specifically to gain benefit from the sharing provision.⁹⁴

Also in section III, WRC drew attention to the potential for Entergy VY to radiologically decommission the site and then delay site restoration. While we sincerely doubt Entergy VY intends to take this course of action, we remain concerned that it is a possibility, especially in light of the insufficiency of the Decommissioning Trust Fund. The 2001 Decommissioning Cost Analysis recognized prompt dismantling of site structures following radiological as desirable, stating:

“Prompt dismantling of site structures is clearly the most appropriate and cost-effective option. It is unreasonable to anticipate that these structures would be repaired and preserved after the radiological contamination is removed. The cost to dismantle site structures with a work force already mobilized on site is more

⁹⁴ Docket 6545 MOU, paragraph 3

efficient than if the process is deferred. Site facilities quickly degrade without continual maintenance, adding additional expense and creating potential hazards to the public as well as to future workers. Abandonment creates a breeding ground for vermin infestation as well as other biological hazards.”⁹⁵

The NRC recognizes there can be overlap between site restoration and license termination activities and expenses, and the Decommissioning Cost Analysis prepared by TLG Services includes some site restoration costs within the radiological component. According to Entergy VY there are even instances in which site restoration activities can be handled more efficiently and at lower cost if conducted concurrently with radiological decommissioning.⁹⁶ Indeed, some site restoration activities such as removal of the cooling towers, intake and discharge structures, and the discharge stack, can be completed before primary radiological decommissioning even begins.

The initial brief provided by Entergy VY offers no assurance that it will not leave the Station in SAFSTOR to gain value through the sharing provision, nor has Entergy VY provided assurance that it will not delay site restoration following radiological decommissioning.

For these reasons WRC asks the Board to reconsider the advisability of the sharing agreement in light of the current inadequate status of the Decommissioning Trust Fund and the perverse incentive the sharing agreement could have on Entergy VY to extend the period of SAFSTOR. We also ask the Board to require that site restoration occur concurrently with radiological decommissioning to the maximum extent practical, and that in no case should a delay be permitted between radiological decommissioning and site restoration.

VII) THE BOARD SHOULD REQUIRE THE REMOVAL OF ALL STRUCTURES REGARDLESS OF DEPTH, AND SHOULD REQUIRE ENTERGY VY TO FULLY FUND THE DECOMMISSING TRUST FUND TO MEET THIS STANDARD

WRC argued in our initial brief that Entergy VY should be required to remove all structures,⁹⁷ and as expected, Entergy VY used its initial brief to argue otherwise.⁹⁸ WRC’s position remains unchanged; Entergy VY agreed to the “removal of all structures” in docket 6545 and should be held to that standard.

Entergy VY’s claim that “industry practice is to remove structure to several feet below grade and not to further depth”⁹⁹ is irrelevant because Vermont sought a higher standard of remediation, and Entergy VY agreed to the “all structures” standard. Entergy VY’s argument that “absent

⁹⁵ Docket 7862, PSD-Cross-16, Decommissioning Cost Analysis, January 2007, section 2, page 7. Similar text is contained in the 2012 Decommissioning Cost Analysis entered in docket 7862 as EN-TLG-2, but the language is less descriptive.

⁹⁶ Docket 7872, TR, 6/17/13, Vol. I, Cloutier, page 77 line 9 through page 79 line 5

⁹⁷ Docket 7862, WRC initial brief, 8/16/13, page 48-52

⁹⁸ Docket 7862, Entergy VY initial brief, 8/16/13, page 37

⁹⁹ Docket 7862, Entergy VY *Proposal For Decision*, 8/16/13, page 137, finding 695

some manifest intent to apply a different meaning to a technical term...the technical meaning must be given effect”¹⁰⁰ ignores that the plain language meaning of the term “remove all structures” which was considered in docket 6545. In that docket the Board defined its goal as “to encourage ENVY to conduct the most safe and thorough decommissioning possible.”¹⁰¹ Even if “remove all structures” is considered a “technical term,” there was a manifest intent to provide the most thorough decommissioning possible which would include the removal of all structures, rather than just some parts of some structures. Entergy VY’s argument that “there is no reason to change the three-feet-below-grade site restoration standard”¹⁰² misses the point; the removal of all structures *is the standard* agreed to by Entergy VY, and to use a three foot standard would be a change. WRC appreciates that the Department has considered our arguments presented through the technical hearings, and now agrees with this interpretation.¹⁰³

WRC has always been willing to negotiate a modification of the “all structures” standard, but Entergy VY has declined to do so.¹⁰⁴ Our offer stands; if Entergy VY identifies all below grade structures, their depths and cost of removal, WRC will gladly work to identify those structures that could reasonably be left in place so that decommissioning funds could be allocated to other tasks. And we would support presenting a negotiated MOU to the Board for its consideration.

In light of Entergy VY’s commitment in docket 6545 to remove all structures and Entergy VY’s failure to provide adequate information with which to evaluate which structures could reasonably be left in place, WRC asks the Board to require that Entergy VY remove all structures, and that the Decommissioning Trust Fund be adequately funded to meet this standard.

VIII) THE BOARD SHOULD ADDRESS TWO PROCEDURAL MATTERS

Entergy VY first began the process of securing a new or amended CPG with docket 7440 prefile notifications in 2007. This process has traveled a long and difficult course, and will shortly culminate in abrupt changes following the cessation of operations. There have been numerous issues raised that require Board attention, some demanding immediate action, and others that will weigh on the Board’s schedule in future years. In this section WRC highlights two of those issues.

a) The Board should recognize the *Second Amended Petition* filed by Entergy VY on August 27, 2013

On August 27, 2013 Entergy Corporation and Entergy VY publically announced that they intend to cease operations at the VY Station in the fourth quarter of 2014. Several hours later Entergy

¹⁰⁰ Docket 7862 Entergy VY initial brief, 8/16/13, page 38

¹⁰¹ Docket 7862 WRC initial brief, 8/16/13, page 49, finding 108, quoting Docket 6545 Order, 6/13/02, page 37

¹⁰² Docket 7862, Entergy VY initial brief, 8/16/13, page 37, heading “E”

¹⁰³ Docket 7862, Public Service Department initial brief, 8/16/13, page 52, heading 3 and findings 138-140

¹⁰⁴ Docket 7862 WRC initial brief, 8/16/13, page 51, docket 7440 reply brief, 8/7/09 (attached to the docket 7862 initial brief) page 19.

VY filed a *Second Amended Petition* which notably changes the requested operating period of a new or amended CPG to conclude on December 31, 2014.

WRC appreciates that Entergy VY has made its intentions to cease operations official and binding by filing the *Second Amended Petition* with the Board, which eliminates any ambiguity about whether Entergy VY is firm in its decision. WRC also appreciates that the Board (with Entergy VY's blessing) accepted the August 27, 2013 press release¹⁰⁵ and a September 23, 2013 letter to the NRC¹⁰⁶ into the record. These two documents, when coupled with the *Second Amended Petition*, explain what Entergy VY intends to do and why, and adequately complete the record regarding the announced change.

WRC was initially concerned that the *Second Amended Petition* would spawn another round of prefiled testimony, discovery, hearings, and briefings, and we accepted that all parties should be given an opportunity to address the change. The Board convened a status conference on October 1, 2013 at which it gave all parties, including Entergy VY, until October 9, 2013 to offer additional material for entry into the record that would address specific changes related to the *Second Amended Petition*. Only the New England Coalition (NEC) proposed reopening the record,¹⁰⁷ which WRC opposed.¹⁰⁸ We believe this process has been adequate and fair to all parties, and thus we encourage the Board to treat this docket under the *Second Amended Petition*.

We also note that the *Second Amended Petition* does not resolve the ambiguity over whether Entergy VY is seeking a new or amended CPG.¹⁰⁹

b) The Board should establish a process to clarify the terms of the docket 6545 MOU sharing provision, and should establish a process for approving disbursement of funds from the Decommissioning Trust Fund

In Section III and VI of this brief WRC identified the docket 6545 MOU sharing provision and related Board oversight of certain expenses as matters that generate compelling state interests in areas of radiological decommissioning and spent fuel management. The Board should address these issues in this docket to the extent necessary to clarify jurisdiction with regard to radiological decommissioning, spent fuel management and site restoration.

The Board should also consider opening another docket to examine these MOU conditions more closely as they relate to future state oversight, and then define a process that will provide Entergy

¹⁰⁵ Docket 7862, WRC-X

¹⁰⁶ Docket 7862, WRC-Y

¹⁰⁷ Docket 7862, *New England Coalition Proposal Related to Additional Evidence and Hearings*, 10/9/13

¹⁰⁸ Docket 7862, *WRC Response to New England Coalition Proposal Related to Additional Evidence and Hearings*, 10/10/13

¹⁰⁹ Docket 7862, WRC initial brief, 8/16/13, pages 6-9

VY, the State of Vermont, VYNPC, and other parties with clarity as to how the Board intends to handle approving withdrawals from the co-mingled decommissioning trust fund.

Paragraph 7 of the docket 6545 MOU provides that:

“ENVY shall obtain Board approval in the event it requests disbursement of funds from ENVY’s Qualified Decommissioning Trust Fund or Non Qualified Decommissioning Trust Fund (each as defined in the PSA) other than (i) for purposes of decommissioning VYNPS (as decommissioning is contemplated in paragraph 3 above), (ii) for payment of administrative expenses or (iii) for distribution of funds upon completion of decommissioning (including distributions contemplated under paragraph 3 above).”¹¹⁰

WRC is concerned that Entergy VY may wish to negotiate or commit to future payments that it will later seek to draw from the fund, but there is no mechanism for the Board to review those commitments or provide pre-approval. The uncertainty could delay planning and negotiated settlements, and infringe upon the orderly development of the region. As an example, during the technical hearings Mr. Campany (WRC) asked Mr. Twomey (Entergy VY) about the need for approvals and preapprovals related to a hypothetical property tax settlement with the Town of Vernon. Mr. Twomey quite reasonably struggled for an answer:

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5 A. This appears to me to only concern approvals
6 to take money out of the fund. I suppose if we
7 negotiated a dollar amount with the Town and we went to
8 get a disbursement out of the fund reflecting that amount
9 and the Board at that point disapproved of the
10 disbursement, not because we haven't paid, because they
11 didn't think the amount was reasonable, we would find
12 ourselves in a situation potentially where it might have
13 been a good idea to check with the Board, but I don't
14 think literally we would be required to get that approval
15 ahead of time. There may be consequences of that, but I
16 don't think there would be any -- I don't think we would
17 be in violation of this term of the agreement if we
18 decided to negotiate with the Town. Whether or not we
19 would have some peril at the end if the board didn't
20 agree with the ultimate amount I think is another issue.¹¹¹

Property tax settlements are but one example of an expense that Entergy VY might wish to draw from the Decommissioning Trust Fund, and that might then face challenges as to the

¹¹⁰ Docket 6545 MOU, paragraph 7

¹¹¹ Docket 7862, TR, 2/19/13, Vol. I, page 23

reasonableness of the expense and whether it falls into one of the reimbursable categories. Another example is the cost of pre-shutdown planning, which Entergy VY could absorb into its operating budget, but might later attempt to recover from the Decommissioning Trust Fund.¹¹² Likewise, the company might feel a pressing need to offer bonuses to retain key employees through the transition into prompt decommissioning (or SAFSTOR), and might later seek to recover these costs.¹¹³ There may be seemingly essential and urgent costs for things such as emergency planning, disaster preparedness, or off-site radiological monitoring that could later be challenged if presented for reimbursement. And there is uncertainty as to whether Entergy VY's legal fees (or the legal fees of the State of Vermont that are charged back to Entergy VY)¹¹⁴ would qualify as reimbursable administrative expenses. There are also questions as to when Entergy VY can access Decommissioning Trust Funds to cover spent fuel management costs, and which of those costs are payable from the Trust.

Although we do not yet know what expenses Entergy VY hopes to recover from the Decommissioning Trust Fund, it is likely that some requests will trigger controversy. The expenses that can be paid or reimbursed under paragraph seven for "decommissioning" are poorly defined in paragraph three, leaving much ambiguity. And the timing and triggering mechanism for the sharing of excess funds is not well defined by paragraph three, which creates even more ambiguity that may affect Vermont ratepayers.¹¹⁵ Further, it is unclear what other funding sources Entergy VY will have in the 'out' years of a hypothetical protracted SAFSTOR period, and how expenses will be paid if the Board rejects reimbursement from the Decommissioning Trust Fund.

With cessation of operations looming and a desire to prepare for future financial order gaining prominence, there is a need for clarity. WRC asks the Board to consider its role in approving the disbursement of funds from the Decommissioning Trust Fund, and to establish a process (perhaps through another docket with a hearing officer) to handle these requests. We hope that with foresight these difficult questions can be quickly identified and addressed through a new MOU, but even that process can't be comfortably ratified without Board approval.

¹¹² Docket 7862, PWT, 10/22/12, Brewer, page 22, line 7

¹¹³ Docket 7862, WRC-X, Press Release, re: *Entergy to Close, Decommission Vermont Yankee*, page 3, in which Entergy Corporation identifies a plan to recognize charges totaling approximately \$55 to \$60 million associated with future severance and employee retention costs. It is unclear if Entergy VY intends to later recover these costs from the Decommissioning Trust Fund.

¹¹⁴ 30 V.S.A. §§ 20-21

¹¹⁵ Docket 7862 WRC initial brief, 8/16/2013, page 59, discussion

Conclusion

Vermont Yankee has been an important economic engine within the Town of Vernon and Windham region since construction began in the 1960's. With Entergy VY's announcement that operations will cease in the fourth quarter of 2014 the regional economy will enter a new phase. WRC is necessarily concerned with the nature and rate of that change, and hopes to prevent an economic implosion when the plant closes. To that end WRC has consistently sought prompt and complete decommissioning of the site upon closure, full budgeting and funding of the Decommissioning Trust Fund, and to hold ENVY, ENO, and Entergy Corporation jointly and severally responsible for all costs of decommissioning. We approach the conclusion of this docket with an elevated sense of urgency, and stress the importance of fully funded, prompt, and complete decommissioning as necessary to support the orderly development of the region.

When Entergy VY purchased the Station it expected to be able to begin immediate decommissioning upon shutdown at the conclusion of the license period in 2012, and committed to a decommissioning plan that "in the worst case" would have the site fully restored by 2031.¹¹⁶ The Board should require full funding of the Decommissioning Trust Fund to cover all reasonably expected costs for the prompt decommissioning of the Station, even if Entergy VY chooses a different timetable for decommissioning with the approval of the NRC. The Board should require the decommissioning process to begin and conclude as early as is reasonably possible, which was Entergy VY's original plan and is necessary to serve the orderly development of the region. Given the announced shutdown in 2014, under no circumstances should site restoration extend beyond the 2031 bounding date established by Entergy VY at the time of purchase.

Entergy VY has been operating without Board authority since March 21, 2012, and intends to continue operating through late 2014. WRC takes no position with regard to whether or not the Board should grant a CPG for continued operations, but we ask that if a CPG is granted, conditions be included to fully address the recommendations of WRC in our initial and reply briefs such that the operation will serve the orderly development of the region, by requiring prompt and complete decommissioning, full funding of the Decommissioning Trust Fund, and holding Entergy VY and its corporate parent jointly and severally responsible for all costs of decommissioning. Whether or not Entergy VY is offered a CPG, the conditions necessary to serve the orderly development of the region and the general good of the state should be applied retroactively to that period of time through which the Station has operated without an authorizing CPG.

WRC takes a long-view of regional planning and traditional land use decisions. We remain focused on the redevelopment of the VY site whenever it might occur, realizing that a return of this site to productive economic use following closure may be delayed for many decades, even if the site is promptly and completely decommissioned. We recognize the importance of prompt

¹¹⁶ Docket 7862, WRC initial brief, 8/16/13, page 45, finding 90; WRC-Cross-27, Docket 6545 Entergy VY *Proposal For Decision*, paragraph 41

and complete decommissioning of the site from an economic standpoint, but likewise we recognize that as the generation that benefited from the operation of the plant, we should be responsible for its remediation, and we should not leave that task to our grandchildren's generation.

Dated at Brattleboro, Vermont this 25th day of October, 2013

Windham Regional Commission

By:  _____

Christopher Campany, AICP
Executive Director

PSB Docket 7862 Service List

I, Chris Campany, hereby certify that on the 25th day of October 2013, a copy of the attached filing regarding **Docket No. 7862** was sent via U.S. Mail, postage prepaid, to the following:

Susan Hudson, Clerk
VT Public Service Board
Chittenden Bank Bldg.
112 State Street – Drawer 20
Montpelier, VT 05620-2701

Carolyn Browne, Esq.
Central Vermont Public Service Corporation
77 Grove Street
Rutland, VT 05701

Geoff Commons, Director of Public Advocacy
Aaron Kisicki, Esq. Special Counsel
Vermont Department of Public Service
112 State Street
Montpelier VT 05620-2601

Peter Zamore, Esq.
Benjamin Marks, Esq.
Donald J. Rendall, Jr., Esq
Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05446

John Marshall, Esq., Nancy Malmquist, Esq.,
Lisa Fearon, Esq.
Downs Rachlin Martin, PLLC
90 Prospect Street - P.O. Box 99
St. Johnsbury, VT 05819-0099
(For Entergy Vermont Yankee, LLC and Entergy
Nuclear Operations, Inc)

Robert Woolmington, Esq.
Witten, Woolmington & Campbell, P.C.
P.O. Box 2748, 4900 Main Street
Manchester Center, VT 05255
(For TransCanada Hydro Northeast)

Robert C. Juman, Esq., Kathleen M. Sullivan, Esq.,
Sanford I. Weisburst, *Ellyde Roko, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
NY, NY 10010
(For Entergy Nuclear Vermont Yankee, LLC and
Entergy Nuclear Operations, Inc.)

Jared M. Margolis
Visiting Assistant Professor
University of Oregon School of Law (for New
England Coalition)
1667 Fairmount Blvd.
Eugene, OR 97403

Robert B. Hemley, Esq., Matthew B. Byrne, Esq.
Gravel and Shea PC
PO Box 369
Burlington, VT 05402-0369
(For Entergy Vermont Yankee, LLC and Entergy
Nuclear Operations, Inc)

Brice Simon, Esq.
Breton & Simon, PLC
(For New England Coalition)
P.O. Box 240
Stowe, VT 05672

Jon Groveman, Esq., General Counsel
Catherine Gjessing, Esq. General Counsel
Vermont Agency of Natural Resources
103 South Main Street,
Waterbury, Vermont 05671-0301

Sandra Levine, Esq.
Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite #4
Montpelier, VT 05602

Brian Dunkiel, Esq., Karen Tyler, Esq.,
Geoffrey Hand, Esq., Rebecca Boucher, Esq.
Dunkiel Saunders Elliot Raubvogel & Hand
91 College Street
Burlington, VT 05401

James A. Dumont, Esq.
Law Offices of James A. Dumont, Esq. PC
PO Box 229 – 15 Main Street
Bristol, VT. 05443
(For Vermont Public Interest Research Group)

Jamey Fidel, Esq., General Counsel for VNRC
Paul R. Brierre, Esq., Counsel for VNRC & CRWC
Vermont Natural Resources Council
9 Bailey Avenue
Montpelier, VT 05602

Caroline S. Earle, Esq.
Law Office of Caroline S. Earle, PLC
107 State Street, PO Box 1385
Montpelier, VT 05601-1385
(For International Brotherhood of Electrical
Workers, Local Union 300)

Jeffrey C. Wimette, IBEW
3 Gregory Drive
South Burlington, VT 05403

Gerald R. Tarrant, Esq.
(For VNRC/CRWC)
Tarrant, Gillies, Merriam & Richardson
44 East State Street
P.O. Box 1440
Montpelier, VT 05601-1440

Gina Atwood, Esq.
Christopher Land, Esq.
Elise N. Zoli, Esq.
*Paul E. Nemser, Esq.
Goodwin Proctor LLP
53 State Street
Boston, MA 02109

William Driscoll
Associated Industries of Vermont
Vice President
P.O. Box 630
Montpelier, VT 05601

John Randall Pratt
Vermont Electric Cooperative
42 Wescom Road
Johnson, VT 05656

Felicia H. Ellsworth, Esq.
Mark C. Fleming, Esq.
Bonnie L. Heiple, Esq.
Robert C. Kirsch, Esq.
*H. David Gold, Esq.
(For VT DPS)
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109

*Patricia O'Donnell, Chair
Vernon Selectboard
567 Governor Hunt Road
Vernon, VT 05354

*William M. Jay, Esq.
Goodwin Proctor LLP
901 New York Avenue NW
Washington, DC 20001-4432

*Motion to Appear *pro hac vice* pending.

Interested Party:

John Greenberg
The Bear Bookshop
564 Butterfield Road
Brattleboro, VT 05301
jsg1@copper.net
(Prefers email copy only)



Chris Campany, Executive Director
Windham Regional Commission
139 Main Street, Suite 505
Brattleboro, VT 05301