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

WINDHAM REGIONAL COMMISSION COMMENTS RE: ENTERGY VY PETITION FOR A CERTIFICATE OF PUBLIC GOOD FOR A SECOND SPENT FUEL STORAGE FACILITY

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**Introduction**

On May 15, 2014 Entergy Nuclear Vermont Yankee (ENVY) and Entergy Nuclear Operations (ENO), together as Entergy VY, provided Windham Regional Commission (WRC) with a prefile notification of its intent to petition for a Certificate of Public Good (CPG) to construct a second spent fuel storage facility (ISFSI). On June 13, 2014 WRC provided written comments in a memo to Entergy VY and the Board recommending that the Petition include additional information. On June 30, 2014 Entergy VY filed its Petition. Board Rule 5.402(A)(2) allows that a regional planning commission may provide revised recommendations within 45 days if the Petition contains new or more detailed information. Although the June 30, 2014 Petition failed to address many of the issues raised in the WRC comment memo, it did include new and more detailed information, and it is on that basis that WRC provides these comments and recommendations.

WRC is the regional planning commission representing the interests of the 27 Vermont municipalities and 46,000 residents of Southeastern Vermont. As a matter of policy WRC does not support or oppose Section 248 petitions. Our purpose is to present the recommendations of the WRC in order for the Board to give due consideration to those recommendations per 30 V.S.A. § 248 (b)(1). Our recommendations are grounded in the Windham Regional Plan. The WRC seeks to have all issues of regional importance addressed within the CPG process, and serves as a local source of information for our many constituents.

The 2006 WRC Regional Plan includes the following two policies specifically related to spent fuel management:

1. **Encourage a requirement that permanent spent nuclear fuel (SNF) storage be resolved prior to any consideration of extending or reviewing the operating license of Vermont Yankee.**

2. **Support increased local and regional public involvement regarding all SNF permitting and licensing decisions.**

WRC most recently raised concerns about spent fuel management, funding for spent fuel management, and alternatives to the existing approach to spent fuel management, in docket 7862, but the Board declined to consider spent fuel issues in that docket. WRC reiterates our concerns

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1 The May 15, 2014 prefile notification identified the acronym ISFSI as *Interim* Spent Fuel Storage Installation, which is consistent with the docket 7082 Board Order dated 4/26/06 and previously filed Spent Fuel Management Plans dated June 2006, November 2008, March 2011, and March 2013. The June 30, 2014 Petition identified the acronym as *Independent* Spent Fuel Storage Installation, which was repeated in the Spent Fuel Management Plan dated June 2014 and filed with the Petition as EN-GT-2.

2 Entergy VY has provided the June 13, 2014 WRC prefile comment memo as exhibit EN-TMT-3

3 WRC 2006 Regional Plan, page 95, Community Resources Policies
and asks the Board to review prior filings for our specific arguments. If the Board, other intervenors, or the public require copies of our previous filings or any of the documents referenced here, WRC will be happy to provide them upon request.

WRC recognizes the value in expeditiously moving spent fuel from wet to dry storage, and has advocated for prompt movement of spent fuel since our engagement in docket 7082 beginning in 2005. WRC expects that Entergy VY’s June 30, 2014 Petition will ultimately be approved by the Board. We hope that our comments and recommendations will be given due consideration, and that any resulting CPG will address regional concerns either directly through Board imposed conditions, or through an underlying Memorandum of Understanding (MOU). Should Entergy VY choose to pursue an MOU with any stakeholders, including state agencies, the WRC asks that it be included in those negotiations in order to give voice to the issues of the host region.

WRC has been an active participant in many previous dockets involving Entergy VY, including dockets 6812 (uprate), 7082 (dry casks), 7440 (CPG extension), 7600 (tritium leaks), and 7862 (CPG extension). We expect to file a separate request for status as an intervenor in this docket, but we do not expect to participate in discovery or cross examination and thus will be unable to pursue our concerns within the hearing process. Our public resources have been stretched thin and we believe those resources can best be applied more locally. Nevertheless, we hope the Board and other intervenors will pursue our filed comments and recommendations through technical hearings. We may file concluding briefs if additional information becomes available.

1) **Funding for Spent Fuel Management**

In its prefile notification Entergy VY asserts that alternatives to its proposal would be more expensive, and:

> would require Entergy VY to incur significant personnel and other operating expenses that would have to be paid from the nuclear decommissioning trust because Entergy VY will have no revenue source once the VY Station ceases operation. This draw from the fund would slow growth of the trust balance and would delay the time when major decommissioning activities could begin.\(^4\)

WRC sought additional information about these potential costs and how the costs would be paid.\(^5\) The prefiled testimony of Michael Twomey states “Entergy VY expects that the direct costs of spent fuel storage will be recoverable until the DOE removes the fuel from the VY Station, apart from the cost of capital during the period between incurring the costs and recovering them from DOE,”\(^6\) and appears to rely on use of the Decommissioning Trust Fund

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\(^4\) Prefile notification, 5/15/14, page 3  
\(^5\) Petition, 6/30/14, EN-TMT-3, WRC Comment Memo dated June13, 2014, bullets 1,3,4  
\(^6\) Petition, 6/30/14, prefiled testimony of Michael Twomey, page 10, line 8
and Department of Energy (DOE) reimbursement. Likewise, Mr. Twomey appears to testify that oversight by the Nuclear Regulatory Commission (NRC) will assure adequacy of funds for spent fuel management and decommissioning.\(^7\)

The testimony of George Thomas also appears to rely heavily on use of the Decommissioning Trust Fund, but in discussing the potential use of more expensive underground casks Mr. Thomas says, “*Entergy VY would be seeking to pay for these additional costs (as compared to the cost of the project) from the nuclear decommissioning trust, slowing the growth of the trust balance and delaying the time when the major decommissioning activities could begin.*”\(^8\) It is not clear what alternative funds Mr. Thomas believes might be used for “the project” as compared to the evaluated alternative, but WRC believes there are multiple alternative funding sources that should be used in place of the Decommissioning Trust Fund.

The NRC regulates the availability of funds for decommissioning and spent fuel management, but it does not consider the additional costs of site restoration, nor does it allow dedicated decommissioning funds to be used for spent fuel management without an exemption.\(^9\) WRC is concerned that any additional costs imposed upon the Decommissioning Trust Fund or the new Site Restoration Fund, including costs for spent fuel management, will reduce growth of the Funds and ultimately delay the point at which the site can be restored and returned to productive economic use.

Entergy VY has established a separate Site Restoration Fund through the MOU agreed to in docket 7862, but continues to rely on growth of the master Decommissioning Trust Fund to cover at least some costs of site restoration.\(^10\) The master Decommissioning Trust Fund was valued at $635,816,053 on July 31, 2014.\(^11\) Entergy VY has made a single deposit of just $10 million into the Site Restoration Fund, with a commitment to add an additional $15 million and to provide a $20 million guarantee to assure fund growth up to $60 million.\(^12\) Estimates for nuclear decommissioning, spent fuel management, and site restoration place the cost at more than a billion dollars, and site restoration alone could cost as much as $225 million.\(^13\) Both trust funds are currently insufficient, and any additional spent fuel management costs imposed on the Decommissioning Trust Fund will at the very least delay nuclear decommissioning of the site, which would in turn delay site restoration and return of the site to productive economic use. It is

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\(^7\) Petition, 6/30/14, prefiled testimony of Michael Twomey, page 10, line 15, answer 16
\(^8\) Petition, 6/30/14, prefiled testimony of George Thomas, page 21, line 9
\(^9\) Entergy VY intends to apply to the NRC for an exemption to allow dedicated decommissioning funds to be used for spent fuel management, Petition, 6/30/14, prefiled testimony of Michael Twomey, page 12, line 1
\(^10\) Docket 7862, transcript, 01/31/14, Twomey, page 143, line 1; transcript, 01/30/14, Recchia, page 46, line 11; Recchia, page 141, line 10
\(^11\) Email from Aaron Kisicki, Special Counsel, Vermont Department of Public Service, to select service list including WRC Commissioner Tom Buchanan, 8/8/14.
\(^12\) Docket 7862, MOU, 12/23/13, paragraph 7
\(^13\) Docket 7862, Initial Brief of WRC, 8/16/13, page 52, section X
even possible that higher costs or a low rate of return on the investment will cause the fund to lose value which would not just delay site restoration, but could prevent site restoration and reuse of the site entirely.

WRC has previously expressed a concern that DOE may not reimburse all future expenses incurred in managing spent fuel after the Station ceases operation, which could exacerbate the deficiency of the funds.14 We have argued that alternative funding sources exist including funds Entergy VY expects to receive from the Department of Energy (DOE) for breach of contract related to spent fuel management expenses while the Station is operating.15

The Board should reject any Entergy VY assertion that available funding is limited to the Decommissioning Trust Fund and should instead require Entergy VY to first use reimbursements paid by DOE for past spent fuel management to offset future spent fuel management costs, and then use alternative funds from ENVY, ENO, and Entergy Corporation. Ensuring robust funding for decommissioning is in the fundamental best interests and public good of the region and the state, and would help to ensure that the site will be decommissioned and restored in an expeditious manner that promotes the orderly development of the region.

2) **Responsibilities Are Held Jointly and Severally**

ENVY and ENO are joint petitioners in this docket, as they have been in every docket since ENVY purchased the Station in 2002. From a practical standpoint both ENVY and ENO function as one and the same with substantial overlap of corporate directors and officers.16 Both ENVY and ENO are subject to Board jurisdiction while the Station is operating, and Board jurisdiction does not expire when the Station ceases operation. Entergy Corporation is the parent of both ENVY and ENO and exerts direct influence through financial guarantees, direct investment, management of budgets and local decision making, and the structure and

14 Docket 7862, Reply Brief of WRC, 10/25/13, page 10 (“In its [docket 7862] 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. 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, 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.”)

15 In docket 7862 WRC and other intervenors expressed a concern that there would be insufficient funds to meet the demands of the December 23, 2013 MOU. Entergy VY witness Michael Twomey identified DOE reimbursement for spent fuel storage costs prior to shut down as one additional revenue stream to supplement the Entergy VY MOU commitment and the Decommissioning Trust Fund. Docket 7862, Transcript, 1/31/14, Twomey, page 59, lines 1-14

composition of its corporate subsidiaries. It was Entergy Corporation that interceded in docket 6300 to block the sale of the VY Station to AmerGen in 2001 and then posted a performance bond to purchase the Station before ENVY even existed.\(^\text{17}\)

WRC has made extensive prior arguments that both ENVY and ENO have jointly operated the Station for more than 12 years, and have made decisions regarding operations and spent fuel management on behalf of and with the direct oversight of Entergy Corporation.\(^\text{18}\) The primary revenue stream while the Station is operating is from the sale of electricity. ENO will have ongoing revenue even after the Vermont Yankee Station ceases producing electricity, and Entergy Corporation has extensive alternative revenue streams.

The Board should recognize ENVY and ENO as jointly and severally responsible for all spent fuel management costs, and should likewise hold Entergy Corporation, as the parent, ultimately responsible for all future spent fuel management costs that are not reimbursed by DOE. Spent fuel management costs, including the costs of capital, should not be paid from the Decommissioning Trust Fund for the same reasons argued in the prior section.

We recognize that Entergy VY will likely argue that the PSB cannot compel use of funding, other than that from the Decommissioning Trust Fund, to build the second ISFSI storage pad. While we are asking the Board to compel the applicant to use alternative funding and to hold the various corporate entities jointly and severally liable, we also hope that those same corporate entities will consider the perspective and position of the host region and pursue this remedy of their own accord.

3) Alternatives Considered

In its prefile notification Entergy VY provided a quick summary of alternatives considered including leaving the fuel in the elevated spent fuel pool, using underground casks, and building a second ISFSI that would be far removed from the existing ISFSI (while apparently continuing to use the first ISFSI).\(^\text{19}\)

\(^{17}\) Docket 7862 Initial Brief of WRC, 8/16/13, page 24, finding 7 and footnote 82 citing to docket 6300 Order dismissing petition dated 2/14/01.

\(^{18}\) Docket 7440, Reply Brief of WRC, 8/7/09, page 3; docket 7862, Initial Brief of WRC, 8/16/13, page 24, section II; docket 7862, Reply Brief of WRC, 10/25/13, page 6, section II; docket 7862, Comments of WRC re Reply Briefs, page 5, section 2; docket 7862, WRC Post Hearing Brief and Proposal for decision, 2/21/14, page 3, item 2

\(^{19}\) Petition, 6/30/14, prefiled testimony of George Thomas, page 19, line 20, Answer 30
WRC sought additional information about all alternatives considered, including the construction and ongoing cost of each, and the affect each alternative would have on the cost, complexity, and timing of decommissioning and subsequent reuse of the site.\textsuperscript{20}

The prefiled testimony of Entergy VY witness George Thomas provided additional information about the alternatives Entergy VY did consider, and correctly noted that “\textit{when the Board approved the existing ISFSI, Entergy VY indicated that an additional storage pad would be needed after the VY Station ceased operation}.”\textsuperscript{21}

While the proposed location for the second ISFSI might be the best option, Entergy VY has not fully considered all reasonable alternatives, nor has it provided sufficient information to conclude that the proposed option is actually the best available option. Specifically, we believe it is in the best interest of the region and the state to know how the proximity of the existing and proposed ISFSI storage pads will affect the demolition associated with the eventual plant decommissioning.

WRC agrees with Entergy VY that “\textit{keeping the spent fuel in the spent fuel pool is not a substitute for constructing a Second ISFSI storage pad because the VY Station cannot be fully decommissioned until all spent fuel has been removed from the spent fuel pool}.”\textsuperscript{22} And we recognize that supporting two separate spent fuel storage pads at different points on the site might be prohibitively expensive and could restrict reuse of the property. However, Entergy VY did not adequately consider consolidated storage of all the spent fuel elsewhere on the site, nor has Entergy VY adequately considered or made a reasonable effort to remove the spent fuel from the VY site.

\textbf{a) A Single Consolidated Pad Located Elsewhere on Site}

When Entergy VY sought approval for the existing ISFSI in docket 7082 the company asserted that upon closure a second larger ISFSI would be constructed to hold all the fuel and would be located away from the reactor complex (unless DOE was in the process of accepting spent nuclear fuel) because the placement of spent fuel close to the power block would inhibit eventual decommissioning or otherwise make decommissioning more expensive or difficult. It was on this basis that the Board approved the first ISFSI. Although Entergy VY has previously acknowledged its plan to consolidate all the spent fuel on a single ISFSI far removed from the reactor complex,\textsuperscript{23} the company does not appear to offer an evaluation of this well established alternative in its current Petition.\textsuperscript{24}

\textsuperscript{20} Petition, 6/30/14, EN-TMT-3, WRC Comment Memo dated June 13, 2014, item 1
\textsuperscript{21} Petition, 6/30/14, prefiled testimony of George Thomas, page 20, line 7
\textsuperscript{22} Petition, 6/30/14, prefiled testimony of George Thomas, page 20, line 13
\textsuperscript{23} Docket 7082 Board Order, April 26, 2006, page 25 (\textit{“Certainly, other possible locations exist within the Vermont}}
In docket 7440 WRC raised questions about where a new consolidated ISFSI would be located, and expressed concerns that the location Entergy VY previously identified for this use as the “North 40” had recently been sold for use as a VELCO switchyard, and storing fuel elsewhere on site might prevent redevelopment or increase costs. Entergy VY asserted that a new ISFSI sufficient to accommodate all the spent fuel from operations through 2032 could probably still be built in the “North 40,” and that other locations existed on the site for the single consolidated ISFSI, including the current site of the cooling towers. Throughout the docket 7440 process Entergy VY did not suggest it would leave any fuel on the original pad (unless DOE was in the process of accepting spent nuclear fuel from the Station), and made clear that a second larger pad would need to be constructed far from the main reactor complex to accommodate all the spent fuel. WRC does not have the complete docket 7082 record, but we do not believe the possibility of two separate pads being used simultaneously was seriously considered in docket 7082.

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24 The prefilled testimony of George Thomas appears to consider a second pad outside the existing protected area while also continuing to operate the existing pad. See prefilled testimony, page 22, line 4, item 3, which discusses moving the fuel “between” ISFSI’s, rather than simply from the old ISFSI to the new ISFSI.

WRC remains concerned that a pair of spent fuel storage pads adjacent to the power block structures will either delay the point at which the Station can be decommissioned and the site restored, or could increase the costs of decommissioning. Entergy VY apparently intends to pay these costs from the Decommissioning Trust Fund and the Site Restoration Fund and then hope for reimbursement from DOE, which is not assured. Likewise we are concerned that spent fuel located in the center of the site could have profound impacts upon redevelopment after the reactor complex has been decommissioned and restored. Michael Twomey testified that the second ISFSI will facilitate potential reuse of the site, yet given its placement, exactly the opposite may be true.

Entergy VY witness George Thomas offers a number of financial reasons why a separate ISFSI should not now be located outside the Protected Area (PA), mostly related to the costs of a second pad positioned distant from the existing pad. However, it was Entergy VY that established the first pad in its current location while also assuring the Board and intervenors in docket 7082 that all fuel would be removed from the protected area to a distant consolidated pad following shutdown.

Entergy VY elected to build an undersized pad within the protected area to reduce its operating costs relative to a pad located elsewhere on the site, while deferring costs for a second consolidated pad to the post-operations period such that those costs would likely be assigned to the Decommissioning Trust Fund. And Entergy VY elected to sell property in the area known as the “North 40” to VELCO for a switchyard, raising capital for itself, but potentially rendering that area unsuitable for a consolidated ISFSI. In essence, Entergy VY has used discretion to serve its own interests at the expense of regional and state interests by shifting significant current expenses into the future when those expenses will likely fall on the Decommissioning Trust Fund. The Board should address the financial implications of this discretionary decision making to protect the regional and state interests and to assure the adequacy of the Decommissioning Trust Fund.

The Board should require consideration of a single consolidated pad far removed from the reactor complex, and if accepted as an alternative, should hold Entergy VY responsible for all costs associated with constructing this pad and moving fuel from the original pad (rather than impose those costs on the Decommissioning Trust Fund). If the current Entergy VY proposal is accepted then Entergy VY should be held responsible for any costs associated with safeguards necessary through the decommissioning and site restoration periods (rather than impose those costs upon the Decommissioning Trust Fund), and should be required to show that the proposal will not inhibit redevelopment of the site.

\[26\] Docket 7862, Reply Brief of WRC, 10/25/13, page 10, second paragraph, please see discussion of DOE reimbursements roughly 13% less than original damage awards.
\[27\] Petition, 6/30/4, prefiled testimony of Michael Twomey, page 5, line 6
\[28\] Petition, 6/30/14, prefiled testimony of George Thomas, page 21, line 19
b) Movement of Fuel Off-Site

Entergy VY has made MOU commitments to use its “commercial best efforts” to move spent fuel off-site and out of Vermont, but the prefiled testimony of Michael Twomey and George Thomas dismiss this alternative nearly out of hand.29

While WRC is not aware of any specific opportunities to move fuel out of Vermont, we do not believe Entergy VY has used its “commercial best efforts” to investigate alternatives, including the possibility of fleet consolidation at another Entergy owned or managed site with the consent of another state’s government. WRC argued this position in docket 7862, but in that docket the Board declined to address spent fuel issues or what standard is implied by “commercial best efforts.”30

When Entergy VY purchased the Station in 2002 it signed an MOU agreeing to use its commercial best efforts to remove spent fuel from the VYNPS as quickly as possible.31 At that time Entergy VY was negotiating with DOE for movement of fuel and also agreed to allow the Vermont Department of Public Service to participate in those discussions. When Entergy VY sought authorization to build the first ISFSI it signed a different MOU that did not mention the DOE negotiations, and more specifically committed to “use its commercial best efforts to ensure that high-level SNF stored at the Station is removed from the site in a reasonable manner and as quickly as possible to an interim or permanent location outside of Vermont” (emphasis added).32

At that time the record showed there were no other options for storing spent fuel, and since DOE was actively engaged in licensing a federal repository in Nevada the Board found Entergy VY’s approach sufficient to meet the best efforts standard.33 Subsequently Entergy VY acknowledged that fleet consolidation of spent fuel is possible, and that Progress Energy has consolidated some of its fuel from multiple reactors to a single site.34 And Entergy VY has acknowledged that DOE is no longer developing the Nevada site and has no alternative sites available, and further acknowledged that DOE issued a report to Congress in which it concluded that it did not have authority under present law to accept spent nuclear fuel for interim storage.35 Entergy VY has

29 Petition, 6/30/14, prefiled testimony of Michael Twomey, page 13, line 13; prefiled testimony of George Thomas, page 22, line 15

30 Docket 7862, Initial Brief of WRC, 8/16/13, page 38, section VII; docket 7862, Comments of WRC re Reply Briefs, 11/22/2013, page 14, section 9; docket 7862, WRC Post Hearing Brief and Proposal for Decision, 2/21/14, page 4, item 7

31 Docket 6545, MOU, paragraph 11
32 Docket 7082, MOU, paragraph 8
33 Docket 7082, Board Order, 4/26/06, page 77, discussion
34 Docket 7862, Initial Brief of WRC, page 40, finding 74 (citing to WRC-Cross-45 answer f). See also findings 70-74.
35 Docket 7862, Initial Brief of WRC, 8/16/2013, page 39, finding 63 (citing to EN-TLG-2, page xiii, footnote 14)
also made clear that it has not even considered fleet consolidation or moving its spent fuel to another location, nor evaluated any off-site options.\textsuperscript{36}

Entergy VY has entered into two distinct MOU’s in which it has committed to use its “commercial best efforts” to ensure spent nuclear fuel is removed from the VY Station. The inclusion of the “best efforts” clause in two separate MOU’s, in two different versions, makes clear that there is a high expectation that Entergy VY will take significant affirmative actions to move the spent fuel from the Station. Entergy VY dismisses “best efforts” as little more than “good faith,” and has compared the standard directly to a “commercial reasonableness” standard, which is an entirely different standard examined by the Vermont Supreme Court in a different case and context.\textsuperscript{37}

Entergy VY has presented no testimony in this docket to show that it has made “reasonable efforts” to locate an appropriate alternative location for the spent fuel aside from DOE placement, nor has Entergy VY taken any action that would meet a more stringent “best efforts” standard. Instead, Entergy VY has made clear it is relying solely on the contractual obligation of DOE, which DOE has acknowledged it can no longer meet. The expectations upon Entergy VY were likely limited in the early years of ownership because DOE was expected to meet its obligations, and because there were no other alternatives. The passage of time has made it clear that DOE does not have a location to which the fuel can be moved, has no plans for such a location, and is not capable of meeting its obligations now or in the future. And we are now aware that other alternatives such as fleet consolidation or placement at another ISFSI are possible.

Entergy VY appears to believe that its only commitment is to work with DOE, and that the best efforts clause does not require anything more. Further, Entergy VY has argued that the Board is preempted from requiring it to even pursue the transfer of spent fuel.\textsuperscript{38} WRC understands the difficulty of locating a site that is willing and able to take delivery of the VY spent fuel, but recognizes that continued storage of the spent fuel on the VY site presents a unique burden to the region, and precludes redevelopment of the site following cessation of operations and decommissioning/site restoration.

The Board should recognize that the new request for spent fuel storage is not simply an incremental increase in necessary storage, but is part of an approach to spent fuel management that is inconsistent with existing commitments. Simply put, Entergy VY is continuing to store spent fuel at the VY Station because it has chosen not to attempt to identify alternatives, and has not met its MOU obligation to use its “commercial best efforts” to remove spent fuel from the

\textsuperscript{36} Docket 7862, Initial Brief of WRC, 8/16/2013, pages 40-41, findings 75-82

\textsuperscript{37} Docket 7862, Comments of WRC re Reply Briefs, 11/22/2013, page 15 (citing to Entergy VY Reply Brief)

\textsuperscript{38} Docket 7862, Comments of WRC re Reply Briefs, 11/22/2013, page 15, responding to Entergy VY Reply Brief, 10/25/13, page 25
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site and from Vermont. The Board should require Entergy VY to document each effort it has previously made to secure an alternate storage site, including costs, fees, or payments it has offered, negotiated, or considered. And the Board should require concrete action by Entergy VY in the future to evaluate every potential alternative site, and aggressive efforts to secure an alternate placement for Vermont Yankee spent fuel.

4) Decommissioning of the ISFSI

The prefile notification did not include information regarding Entergy VY’s plan to decommission the proposed ISFSI, nor did it address site restoration following the decommissioning of the ISFSI.

WRC sought additional information about costs, timing, and the planned extent of decommissioning of the new ISFSI, and how those costs will be paid and/or reimbursed by DOE. The June 30, 2014 Petition makes clear that constructing the ISFSI “is necessary to fully decommission the VY Station,” but is silent about how the ISFSI itself will be decommissioned and the site restored following removal of spent fuel.

Spent Fuel Management Plans previously filed with the Board in response to the Board’s Order in docket 7082 include the following statement:

4.3 Decommissioning Procedure
The Facility will be decommissioned in compliance with the requirements set forth at 10 CFR 72.130, Part F. In addition to these requirements, Entergy VY will comply with the commitments it made regarding decommissioning and site restoration in the Memorandum of Understanding, dated March 4, 2002, as approved by Board Order of June 13, 2002, in Docket No. 6545

However, Revision 4 of the Spent Fuel Management Plan dated June 2014 and filed with the Petition as exhibit EN-GT-2 deletes section 4.3 entirely and does not address decommissioning or site restoration. This omission gives the impression that Entergy VY may not be planning or committing to decommission the ISFSI(s) or to restore this part of the site.

The construction of the new ISFSI will be similar to the existing ISFSI. All soil within the footprint of the new pad will be excavated to five feet below grade and a concrete leveling pad will be poured. Excavation will be from the existing grade of 252 feet above mean sea level to

39 Petition, 6/30/14, EN-TMT-3, WRC Comment Memo dated 06/13/14, page 2, item 4  
40 Petition, 06/30/14, paragraph 7 and elsewhere in testimony  
41 Spent Fuel Management Plans, June 2006, November 2008 (revision 1), March 2011 (revision 2), March 2013 (revision 3)
five feet below grade, and the finished elevation of the pad will be 254 feet above mean sea level.  

When Entergy VY purchased the Station it committed to restore the site by "removal of all structures and, if appropriate, regarding and reseeding the land." Entergy VY has since stated that it plans to remove structures to only three feet below grade, which WRC has consistently argued does not meet the agreed to standard of removal of all structures. WRC is also concerned that Entergy VY appears to rely on reimbursement of expenses by DOE, but it is not clear that DOE would be responsible for radiological decommissioning of the ISFSI, or site restoration of the facility to Vermont standards.

The Board should require Entergy VY to fully decommission the new and existing ISFSI’s when they are no longer needed, and should require the removal of the entirety of the structures. The Board should require Entergy VY to fully fund site restoration of the ISFSI facility without using money from the Decommissioning Trust Fund or new Site Restoration Fund. It is common in Section 248 and Act 250 proceedings to require a separate site restoration fund for newly permitted facilities, and that approach might best be applied here.

5) Extended Planning Horizon

In docket 7082 the Board recognized that Entergy VY was engaged in a protracted negotiation with DOE for removal of spent fuel, and that a DOE plan for a repository in Nevada was long delayed. To address these concerns the Board required that Entergy VY extend its planning horizon with an assumption that spent fuel could remain on the site until 2082.

In the years since the Board’s Order in docket 7082 plans to license the Nevada repository have been cancelled. DOE has not established any other option for permanent storage of spent nuclear fuel, and in a 2008 report to Congress acknowledged that DOE does not have authority under present law to accept spent nuclear fuel for interim storage. Congress itself has been unable to advance legislation to establish any other solution, and appears to be dysfunctional. The June 30, 2014 Petition filed by Entergy VY seeking approval for a second ISFSI now identifies the

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42 Petition, 6/30/14, prefiled testimony of George Thomas, page 16, line 9, answer 24; see also page 18, line 9-15
43 Docket 6545, MOU, paragraph 3
44 Docket 7440, Reply Brief of WRC, 8/07/09, page 17; Docket 7862, Initial Brief of WRC, 8/16/13, page 48, section IX; docket 7862, Reply Brief of WRC, 10/25/13, page 26, section VII; docket 7862, WRC Post Hearing Brief and Proposal for Decision, 2/21/14, page 4, item 8
45 Docket 7082, Board Order, 4/26/06, page 91 condition 10; Docket 7082, CPG, 4/26/06, condition 9
46 Docket 7862, EN-TLG-2, Decommissioning Cost Analysis dated February 2012, page xiii, footnote 14
facility as an *independent* spent fuel storage facility rather than an *interim* facility, and Entergy VY has deleted mention of the eventual decommissioning of the ISFSI from its Spent Fuel Management Plan.

Based on the changes since docket 7082 and increased uncertainty that the federal government will be able to remove spent fuel from Vermont Yankee and other nuclear sites, the Board should consider a longer planning horizon and budget period that recognizes spent fuel may remain on the VY site permanently.

6) Emergency Services

The Entergy VY prefile notification did not include any information about the need for police, fire, or other emergency services, or about how the costs of emergency services would be paid for, which are matters generally considered within a CPG case related to the storage of other fuels such as natural gas. State agencies are holding discussions with Entergy VY about these issues, and we hope a resolution of our concerns can be established outside of the CPG process.

In our prefile comments WRC sought information about the level of emergency response support that will be available on-site throughout the operational period of the new ISFSI, and any anticipated need for off-site emergency assistance including any response to the Station as a whole. We sought a description of all scenarios that might require off-site emergency support, the projected costs of providing that support, and information about any financial assistance that Entergy VY expected to provide to regional first responders and emergency planning efforts.

The Petition does not detail what on-site support will be available, what scenarios might require off-site assistance, or how that assistance will be funded.

Although Entergy VY failed to detail what emergency services might be needed, it nonetheless asserted that the project will not have any impact on non-nuclear public health and safety, and

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48 Spent Fuel Management Plans dated June 2006, November 2008 (revision 1), March 2011 (revision 2), and March 2013 (revision 3) all contain section 4.3 which is a decommissioning procedure for the ISFSI. Revision 4 of the Spent Fuel Management Plan filed with the June 30, 2014 Petition (EN-GT-2) does not contain this section or similar discussion of decommissioning the ISFSI.

49 Petition, 6/30/14, EN-TMT-3, WRC Comment Memo dated 06/13/014, page 2, items 5 and 6
provided supporting letters from Windham County Sheriff Keith Clark\textsuperscript{50} and Vernon Fire Department Chief Todd Capen.\textsuperscript{51}

Until very recently the Town of Vernon had its own police department, but effective June 24, 2014 the Windham County Sheriff’s Office is the primary law enforcement entity responsible for responding to any calls for police services at the VY Station.\textsuperscript{52} It is our understanding that the Town of Vernon will be providing some funding for services by the Sheriff’s department, but additional services will likely be paid for through the Sheriff’s county-wide budget and then spread among all the municipalities in Windham County.

The Petition does not offer any estimate of what services will be required of the Sheriff’s department during the period of Station dormancy, or following decommissioning of the main site when spent fuel remains. We appreciate that the Sheriff’s department will be able to provide coverage without an adverse effect on the public health and safety, but this does not address the costs of service or mutual aid assistance, or how those costs will be paid for. Likewise, the assurance from the Vernon Fire Department that fire services can be provided and the project will not have an adverse effect on public health and safety is appreciated, but here, too, there is no calculation of costs that might be shared through mutual aid assistance.

It is our understanding that Entergy VY employs roughly 623 workers at the Station,\textsuperscript{53} and that it provides substantial on-site emergency support with the existing workforce. When the Station ceases operation the on-site workforce will shrink, and the availability of on-site emergency support will likely be reduced. Once the Station ceases operations, the on-site workforce will likely be paid from the Decommissioning Trust Fund, so any special law enforcement or emergency services provided by on-site staff will affect the funding of decommissioning. The reduced availability of on-site responders may also necessitate additional support from off-site emergency service providers and mutual aid.

We do not know what the maximum level of required emergency services might be, and in spite of WRC’s request the Petition does not offer any meaningful assessment of this need or cost. The Spent Fuel Management Plan does identify several potential minor risks to casks through the transfer process, but there is no attempt to identify a plausible worst case scenario. For example, the Spent Fuel Management Plan assumes a maximum “tornado missile” would be a piece of

\textsuperscript{50} Petition, 6/30/14, EN-TMT-4
\textsuperscript{51} Petition, 6/30/14, EN-TMT-5
\textsuperscript{52} Petition, 6/30/14, prefiled testimony of Michael Twomey, page 6, line 16; EN-TMT-4
\textsuperscript{53} Employment in December 2011 is listed as 623 in docket 7862, Prefiled testimony of Michael Twomey, 6/29/12, page 11, line 2. Employment has since been reduced, and according to an August 4, 2014 story by Vermont Public Radio “Entergy says 572 people were still working at the plant on June 1.” \url{http://digital.vpr.net/post/workers-brace-life-after-vermont-yankee}. (Link checked 8/13/14) WRC sought information about employment levels in our prefile comments (docket 8300, EN-TMT-3, item 9) but Entergy VY declined to provide this information, thus we have used the most current number we are aware of that is within a PSB record.
wood with a wind speed of 300mph\textsuperscript{54} and assumes a maximum postulated fire event involving just 50 gallons of diesel fuel with a cask engulfed for only 3.622 minutes.\textsuperscript{55} While this may be an appropriate means of meeting the NRC requirement for on-site safety, it does not adequately describe the actual potential maximum emergency event, or the required off-site emergency response that might be needed.

On several occasions we have informally asked Entergy VY officials what damage would occur and what emergency resources would be needed if a business class jet were to target the ISFSI. Entergy VY’s response has been to quickly dismiss the potential because they have said that in the post-September 11 world all business jets are tracked by Air Traffic Control (ATC) and would be intercepted by military fighters if they approached the VY Station. This is simply not true. While WRC does not expect a terrorist assault on the site, it is essential from a planning perspective to identify the resources needed to respond to hostile action. Indeed, we have participated in drills about such in the past through our Public Information Officer role in the Radiological Emergency Response Plan.

Typical business class jets such as the Bombardier Challenger\textsuperscript{56} can navigate using visual flight rules without a flight plan and without being directly controlled by ATC, and are capable of flying in or out of Dillant-Hopkins airport in Keene, New Hampshire, less than 20 miles from the VY station. And business class jets can easily fly to or from Keene under a flight plan while being controlled by ATC, and then breakoff within just a few miles of the VY Station to target the ISFSI. The airspace above and around the VY Station is not restricted, and ATC authorization is generally not required to navigate above, around, or through this airspace under visual flight rules. The Bombardier Challenger weighs in excess of 23,000 pounds, has a maximum speed of more than 500 mph, and a fuel capacity of as much as 2,000 gallons. WRC does not believe a business jet is actually likely to crash into the ISFSI, and we are not suggesting that dry fuel storage should be prohibited or moved underground because of this slight risk, however emergency responders and mutual aid planners should know what damage might occur and what resources might be needed under this and other types of hostile action scenarios. The bounding criteria provided by Entergy VY in the Spent Fuel Management Plan do not provide the needed information.

\textsuperscript{54}Petition, 6/30/14, EN-GT-2, Spent Fuel Management Plan, June 2014, page 22 of 68, the Holtec bounding criteria also consider the impact damage from an automobile weighing 3,960 pounds and traveling at 126 mph.

\textsuperscript{55}Petition, 6/30/14, EN-GT-2, Spent Fuel Management Plan, June 2014, page 47 of 68; page 61 of 68

\textsuperscript{56}The Bombardier Challenger, also listed as model BD-100-1A10, was selected for this analysis because Entergy Services Inc. is the registered owner of three Challenger aircraft (N286EC, N334EC, N830EC), and thus should be able to discuss the operation of this type of aircraft within airspace near the Vermont Yankee Station. See: http://registry.faa.gov/aircraftinquiry/Name_Results.aspx?Nametxt=ENTERGY&sort_option=1&pageNo=1 (link checked 8/13/14).
Our concern regarding wide-area emergency responses involving mutual aid for a catastrophic event is heightened because Entergy VY has stated it intends to cease funding of the current Emergency Planning Zone (EPZ) and related mutual aid support. Entergy VY provided funding in 2015 is projected to be $2.1 million, assuming no change in regulatory requirements. This funding has been essential for training emergency services and mutual aid responses, and preparing for the unique hazards of hosting a nuclear station and spent fuel storage facility. While we understand the potential for a catastrophic event will lessen once the Station ceases operations, there remains the potential for a significant event as long as spent nuclear fuel is stored on site, and regional emergency service providers must always be prepared to respond, and must be adequately funded to do so.

WRC recognizes that on-site nuclear safety is regulated by the NRC, but off-site responders must be prepared to deal with any emergency that might occur on-site whether or not it extends to the off-site environment. And the Board traditionally deals with emergency management issues and funding for off-site emergency support in other dockets dealing with different fuels such as natural gas. Likewise, it is not uncommon in non-nuclear Section 248 and Act 250 cases for petitioners to agree to cover specialized equipment and training costs necessitated by the unique elements of proposed development.

The Board should seek additional information from Entergy VY about all potential scenarios that might require an on-site or off-site emergency response, the type of response needed, and the cost for providing these services (including the costs of ongoing training necessary to respond).

State agencies are holding discussions with Entergy VY about emergency response issues and are seeking input from the WRC and towns within the Emergency Planning Zone, and we hope a resolution of our concerns can be accomplished outside of the CPG process. The Board should be mindful of where funding for emergency services will come from, and should consider prohibiting the use of the Decommissioning Trust Fund for this purpose because, as described elsewhere in these comments, Entergy VY has previously done so little to identify, secure, and fund alternative spent fuel storage options.

**Entergy VY’s Request for a Delay**

Entergy VY filed its Petition on June 30, 2014. On July 15, 2014 the Board issued a docket number and Notice of Hearing in which it scheduled a Prehearing Conference for July 30, 2014. On July 25, 2014 Entergy VY filed a letter requesting that the Board defer the Prehearing Conference and further proceedings until the October 2014 timeframe so that engineering studies

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57 According to a story in the Brattleboro Reformer on July 29, 2014 “In 2015, the total in funds coming from Entergy is $2.1 million, according to Erica Bornemann, planning section chief Vermont Division of Emergency Management & Homeland Security.” [http://www.reformer.com/localnews/ci_26233093/vy-emergency-planning-changes-detailed](http://www.reformer.com/localnews/ci_26233093/vy-emergency-planning-changes-detailed) (link checked 8/6/14)
and a site assessment study can be completed. The Board responded on the same day by cancelling the original Prehearing Conference and rescheduling it for October 29, 2014.

WRC stands by our original request that the approval process for a second ISFSI be transparent and swift, a position Entergy VY quoted favorably in testimony filed with its Petition.\(^{58}\) We are disappointed that the necessary engineering and site assessment studies have not yet been completed, and are especially disappointed given that Entergy VY has been aware of the need for a second ISFSI since at least 2005. The second ISFSI is necessary so that fuel can be moved from the elevated spent fuel pool to casks, and in its Petition Entergy VY advised the Board that “construction is expected to begin in mid-July 2015 and be completed by July 31, 2017.”\(^{59}\) It is not clear how the requested delay will affect the planned construction schedule.

When Entergy VY filed its docket 7082 Petition for the original ISFSI in 2005 it timed the filing in such a way that the Board was limited in its ability to require potential alternatives. The Board was troubled by the close timing of the docket 7082 Petition and need for an accelerated process, and made its concerns clear in unambiguous language within the docket 7082 Order:

\begin{quote}
The timing of Entergy VY’s proposal raises some concern. Because the Project is the only facility that could be successfully constructed before Entergy VY exhausts capacity in the spent fuel pool, if we had found that one of the alternatives was preferable, timing alone might have rendered that alternative infeasible unless the Board was willing to risk the potential loss of the economic benefits of Vermont Yankee. As we do not find that the alternatives are clearly preferred, this potential dilemma is not before us. However, in the future, Entergy VY must file its requests for approval under Section 248 sufficiently far in advance to ensure an opportunity for meaningful consideration and implementation of alternatives.\(^{60}\)(Emphasis added)
\end{quote}

WRC has long advocated for expedited movement of spent fuel from wet storage to dry storage, and is concerned that the latest delay requested by Entergy VY could pressure the Board to provide a CPG without sufficient time to consider and implement an alternative, or might prevent Entergy VY from initiating construction in the 2015 summer season as planned (assuming a CPG is granted). This is exactly the position in which the Board was placed in docket 7082.

\(^{58}\) Petition, 6/30/14, prefiled testimony of Harry Dodson, page 25, line 16 (quoting WRC prefile comment letter dated 6/30/14 and filed as Entergy VY exhibit EN-TMT-3)

\(^{59}\) Petition, 6/30/14, prefiled testimony of Michael Twomey, page 5, line 16; testimony of George Thomas, page 19, line 17

\(^{60}\) Docket 7082, Board Order, 4/26/06, page 25, footnote 30
WRC believes the requested delay could be beneficial, but only if Entergy VY carefully considers each of our comments and recommendations, and directly engages with all stakeholders\(^{61}\) in an effort to find common ground before the Petition is further considered by the Board. If Entergy VY listens carefully and fully addresses all concerns to the satisfaction of the stakeholders, it is possible that the delay could produce a better plan and ultimately expedite the CPG process. WRC strongly encourages Entergy VY to do so.

**Conclusion**

WRC appreciates the opportunity to provide comments and recommendations to Entergy VY and the Board. While we do not expect to directly participate in the technical hearing process, we do hope the issues we have raised will be explored by the Board and other intervenors, and that the Board will admit this comment letter into the record.

WRC recognizes that movement of spent fuel from wet to dry storage is an important, desirable, and necessary first step prior to eventual decommissioning, and we have long advocated for dry storage over wet storage. While we do not support or oppose this Petition, we recognize that it is likely to be approved, and we hope conditions will be attached that will support the region. We note that Entergy VY has been very successful in securing CPG approvals when it has addressed regional and state interests in an MOU.

Vermont Yankee has been an important economic engine within the Windham Region, and WRC expects to remain engaged in the transition facing the plant, its employees, and our region as the Station moves toward cessation of operations. We ask the Board to give weight to all of our recommendations as the representative of the 27 municipalities and 46,000 residents in closest proximity to the VY Station, and to give them added “due consideration” under Section 248(b)(1).

We also welcome the ongoing dialog with Entergy VY about our recommendations in this matter and any others, and appreciate their direct outreach to us as they made this filing.

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\(^{61}\) Please see a list of government and non-governmental stakeholders identified in testimony by John Thomas Heron, formerly President, CEO, and Chief Nuclear Officer for Entergy Nuclear (docket 7862, 2/21/13, Volume I, Page 16, Line 20 through page 18, line 5). The service list Entergy VY used when it filed its Petition included governmental stakeholders, but did not include the non-governmental entities previously identified as stakeholders in docket 7862.
Dated at Brattleboro, Vermont this 13th day of August, 2014.

Windham Regional Commission

[Signature]

By: Christopher Campany, AICP
Executive Director