February 21, 2014

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 Windham Regional Commission Post Hearing Brief and Proposal for Decision. Enclosed for filing with the Public Service Board are an original and seven copies of the WRC’s Post Hearing Brief and Proposal for Decision. 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,

Chris Campany, AICP  
Executive Director

Enclosures

Cc:  Docket 7862 Service List
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

WINDHAM REGIONAL COMMISSION (WRC) POST HEARING BRIEF AND PROPOSAL FOR DECISION

Background

Windham Regional Commission (WRC) first became engaged in docket 7862 and its predecessor docket 7440 in October, 2007 when Entergy Nuclear Vermont Yankee (ENVY) and Entergy Nuclear Operations (ENO), jointly referred to as Entergy VY,1 met with WRC to explore regional interests that should be addressed in a Title 30 §248 prefile notification and petition for a Certificate of Public Good (CPG) for operations after March 21, 2012.2 Entergy VY subsequently filed a petition for a CPG on March 3, 2008, an Amended Petition on April 16, 2012, and a Second Amended Petition on August 27, 2013. This six-year process has produced an expansive record, and thus all parties should be well aware of the issues WRC considers necessary to serve the general good of the State and the orderly development of the region.

As has been previously noted, the WRC was not party to the Memorandum of Understanding (MOU) that was filed with the Board on December 23, 2013 or any of the negotiations leading to it.

1 The original petition filed on March 3, 2008 in docket 7440 abbreviated Entergy Nuclear Vermont Yankee as “EVY,” and Entergy Nuclear Operations as “ENO.” The amended petition filed on April 16, 2012 which became the genesis of docket 7862 abbreviated the company’s names as “ENVY” and “ENO.” The second amended petition filed on August 27, 2013 abbreviated the company’s names as “ENVY” and “ENO.” The MOU filed on December 23, 2013 abbreviates the company’s names as “EVY” and “ENO.” For the sake of consistency and ease of pronunciation WRC will reference the company’s as “ENVY” and “ENO” and jointly as “Entergy VY.”

2 WRC’s history of involvement in docket 7440 is outlined in the docket 7440 “WRC Motion For Reimbursement” filed in on April 13, 2012, which was attached to the docket 7862 Initial Brief of WRC dated August 16, 2013.
WRC Concerns

WRC has raised multiple issues to be addressed whether or not a CPG is granted for continuing operations. Our concerns are many, with most falling into three broad categories.

• First, WRC seeks to have responsibility for operations and decommissioning held jointly and severally by Entergy Nuclear Vermont Yankee, Entergy Nuclear Operations, and Entergy Corporation.

• Second, WRC seeks 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 seeks 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 those costs to be shifted onto the Decommissioning Trust Fund.

In addition to the above points, WRC has argued that Entergy VY lacks authority to operate the Station after March 21, 2012 and thus whether or not a CPG is granted for future operations the conditions necessary to serve the orderly development of the region should be made retroactive to March 21, 2012. We have also argued that Entergy VY’s ongoing challenges to Board and State authority based on preemption are overly broad.

WRC, in its role as an intervener in this docket, has made consistent recommendations regarding conditions necessary to serve the general good of the State and orderly development of the region, and in particular conditions that will assure prompt and complete decommissioning so that the operation and inevitable cessation of operations does not interfere with the orderly development of the region. These recommendations should be given additional due consideration.

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3 Docket 7862, WRC Initial Brief, 8/16/13, page 6; Docket 6545, 7082, and 7440, WRC Response to Entergy VY Motion Pursuant to Vermont Rule of Civil Procedure 60(b), 6/13/12; WRC Reply Brief, 10/25/13, page 3, section I

4 Docket 7862, WRC Initial Brief, 8/16/13, page 10, “Federal Preemption”; WRC Reply to Entergy VY Motion for Declaratory Ruling Prescribing Scope of Proceeding, 7/13/12; WRC Reply to Entergy VY Objection to Admission of Prefield Direct Testimony and Exhibits, 12/12/12
as the recommendations of the Regional Planning Commission under Title 30 § 248(b)(1), and we restate them here:

1) Recognize that upon shutdown the orderly development of the region requires the prompt decommissioning of the Station and complete site restoration, and in no case should completion of site restoration be delayed beyond 2031.

2) Require that ownership responsibilities including responsibility for prompt and complete decommissioning and full funding to allow for prompt and complete decommissioning, be held jointly and severally among Entergy Corporation, ENVY, and ENO. At the very least require joint and several responsibility to be shared by ENVY and ENO which are the two petitioners in this and prior CPG petitions.

3) Recognize the Decommissioning Cost Analysis, the decommissioning budget, and the Decommissioning Trust Fund are inadequate, and require Entergy VY to fully fund radiological decommissioning, spent fuel management, and complete site restoration.

4) Require Entergy VY to establish separate and adequate funds to cover the costs of prompt radiological decommissioning, spent fuel management, and site restoration.

5) Recognize the benefits derived from Power Purchase Agreements (PPA’s) and Revenue Share Agreements (RSA’s) in prior dockets, and require comparable value be delivered through any new or amended CPG.
6) Recognize the economic implications of storage of spent fuel in wet vs. dry storage, and require Entergy VY to agree to the movement of spent fuel to dry storage or alternatively add comparable value to the decommissioning fund as if the fuel had been moved during the period of operations, and hold Entergy VY directly responsible for funding the management of spent fuel generated between March 21, 2012 and the date the Station ceases to operate.11

7) Recognize that Entergy VY has not used its commercial best efforts to remove spent fuel from the VY site or from Vermont, a commitment that is included in two prior MOU’s, and require specific actions to comply with this commitment.12

8) Require Entergy VY to meet its docket 7862 MOU commitment to remove all structures as part of site restoration, rather than remove structures to just three feet below grade,13 and recognize this an existing standard established in docket 6545 rather than a new standard or material change to the docket 7862 MOU.

9) Prohibit rubblization of any material at the VY site, and recognize rubblization as inconsistent with site restoration as described in the 2012 Decommissioning Cost Analysis. Rubblization should be defined as “demolition of any structure or structural component into rubble that is buried on site.”15

10) Establish a process to review and approve any and all expenses that will be paid from the Decommissioning Trust Fund because Entergy VY has maintained a comingled trust fund,16 and Entergy VY intends to use monies from the Decommissioning Trust Fund for site restoration, and at the very least expects interest from the Decommissioning Trust Fund to support site restoration.17

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11 Docket 7862, WRC Initial Brief, 8/16/13, page 35, section VI; WRC Reply Brief, 10/25/13, pages 14-16, section IV(c-e); WRC Supplemental Comment Brief, 11/22/13, page 10, section 7
12 Docket 7862, WRC Initial Brief, 8/16/13, page 38, section VII; WRC Supplemental Comment Brief, 11/22/13, page 14, section 9
13 Docket 7862, WRC Initial Brief, 8/16/13, page 48, section IX; page 56, (Removal of Structures); WRC Reply Brief, 10/25/13, page 26, section VII
14 Docket 7862, EN-TLG-2, page XV; section 2, page 8; section 3, page 16, section 5, page 3; see also commitments in docket 7440, Entergy VY Initial Brief, page 47 and footnote 200 (provided as an attachment to this docket 7862 WRC Supplemental Brief); see also docket 7862, NEC Proposal Related to Additional Evidence and Hearings, 10/9/13, pages 6-7, quoting docket 7440 transcript from 5/20/09, Volume I, page 72
15 Docket 7440, WRC Reply Brief, 8/7/09, page 20, filed as an attachment to the docket 7862 WRC Initial Brief, 8/16/13
16 Docket 7862, WRC Reply Brief, 10/25/13, page 7, section III; page 28, section VIII(b); WRC Supplemental Comment Brief, 11/22/13, page 6, sections 3
17 Docket 7862, TR, 1/31/14, Twomey, page 141, line 3 – page 143, line 7
11) Consider striking the docket 6545 MOU sharing provision as a perverse incentive that might encourage Entergy VY to leave the Station in SAFSTOR unnecessarily. 18

12) Require that site restoration begin concurrently with radiological decommissioning to the maximum degree practical, and prohibit any delay between radiological decommissioning and site restoration. 19

13) To the extent that the Board believes desirable conditions requested by WRC, other parties, or through public comments 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, even if only in advisory terms. 20

We also ask the Board to provide a jurisdictional opinion (if appropriate) regarding the Board’s authority to consider a CPG for a new Interim Spent Fuel Storage Installation (ISFSI), in light of a federal court decision that determined Act 74 and Act 160 are facially preempted by the Atomic Energy Act. 21 Entergy VY apparently intends to seek a CPG for a new ISFSI “no later than June 30, 2014,” 22 and responded to a Board question by stating that the Board has authority to issue a CPG for this purpose. 23 WRC asks that if the Board believes otherwise that it says so at least in advisory language so the parties and the legislature can address the concern during the 2014 legislative session.

Conclusion

The Board is now well positioned to evaluate the MOU against the existing record, and whether or not a CPG is issued the Board is positioned to assure conditions are established that will serve the general good of the State and the orderly development of the region. WRC has been consistent in advocacy and in our determination of what is necessary to meet these standards including prompt and complete decommissioning and site restoration.
Our primary focus throughout the docket, and long before the Entergy VY announced its intention to close the Station, has been what is in the best interest of the region when the Station eventually ceases operation, for whatever reason that may be. We have consistently made the case for what we feel is fundamental to the public good in this matter here and in all of our filings. We trust the Board will give due consideration to our positions as the regional planning commission, comprised as we are of town-appointed commissioners.

Based on our understanding of past plant closures and decommissioning, and information testified to under oath by Entergy VY, the most effective way to mitigate the employment and economic impacts of the closure is prompt decommissioning. The MOU between the state and Entergy VY does not call for prompt decommissioning. It also does not assign responsibility for decommissioning costs jointly and severally to the local corporate entities and the parent corporation, it does not establish a specific standard to which the site will be restored, and it does not provide a guarantee that the Decommissioning Trust Fund (or supplemental Site Restoration Fund) will be sufficient.

The MOU offers little and guarantees less. If the best option is acceptance of a modest MOU, then so be it. But if the Board can produce a better outcome with its own decision, then we believe it is the Board’s fundamental responsibility to do so.

In the WRC Supplemental Comment Brief we offered a simple conclusion. We do not believe the filing of the MOU has substantially altered that conclusion, and thus we repeat it here:

“Whether or not Entergy VY is offered a new or amended CPG, the conditions identified as necessary to serve the orderly development of the region and general good of the State should be applied retroactively to that period of time through which the Station has been operating without an authorizing CPG. Entergy VY accepted the risk that it would be held to conditions in a new or amended CPG when it made a conscious decision to continue operation beyond March 21, 2012 without Board authority, and should not be permitted to walk away with the benefits of continued operation without also accepting conditions deemed necessary by the Board.”  

24 Docket 7862, WRC Supplemental Comment Brief, 11/22/13, page 15-16
Dated at Brattleboro, Vermont this 21st day of February, 2014.

Windham Regional Commission

By:

[Signature]

Christopher Campany, AICP
Executive Director

Attachments:
WRC Letter to Susan Hudson, Clerk of the Board, 1/16/14
Docket 7440 Entergy VY Initial Brief (for reference to page 47 and footnote 200)
I, Chris Campany, hereby certify that on the 21st day of February 2014, a copy of the attached filing regarding **Docket No. 7862** was sent via U.S. Mail, postage prepaid, to the following:

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Chris Campany, Executive Director  
Windham Regional Commission  
139 Main Street, Suite 505  
Brattleboro, VT 05301
January 16, 2014

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

Dear Ms. Hudson:

It is the understanding of the Windham Regional Commission that the technical hearings scheduled for January 30-31, 2014 will relate only to the MOU and Settlement Agreement filed on December 23, 2013 by Entergy VY, the Department of Public Service, and the Agency of Natural Resources (MOU Signatories). The WRC was not involved in the negotiations that resulted in the MOU, and is not a Party to the agreement.

The MOU Signatories have established that the MOU may terminate unless it is approved by the Board “substantially in its entirety and contains conditions that do not materially alter, add to, or reject what is provided for”1 in the MOU. Based on this position, WRC believes the MOU should stand or fall on its own.2

WRC neither supports nor opposes continued operation of the VY Station, nor does WRC advocate for the granting or denial of a CPG. Rather, WRC has raised multiple concerns that should be addressed by the Board to serve the general good of the State of Vermont and the orderly development of the region whether or not a CPG is granted.

Our concerns have been many, with most falling into three broad categories. First, WRC has sought to have responsibility for operations and decommissioning held jointly and severally by Entergy Nuclear Vermont Yankee, Entergy Nuclear Operations, and Entergy Corporation. Second, WRC has 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.

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1 Docket 7862, MOU Paragraph 1
2 January 2, 2014 Docket 7862 Status Conference Transcript Page 7: “Windham Regional Commission still feels that the MOU should be able to stand on its own. What we had suggested to the other parties was that the non-signatories to the MOU be allowed to file written briefs but that additional hearings and testimony was not necessary.”
Third, WRC has 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 those costs to be shifted onto the Decommissioning Trust Fund.\(^3\)

Our interests and positions should be clear, as should the interests and positions of each of the other Parties. The Board is now well positioned to evaluate the MOU based on the extensive existing record. As such, WRC will not be serving discovery or participating in the upcoming technical hearings, although we reserve the right to file a concluding brief related to the MOU and Settlement Agreement, and the material covered in the technical hearings on January 30-31, 2014.

Thank you for your continuing focus on this docket. We would appreciate clarification if the Board feels our understanding of the purpose, scope, and intent of the technical hearings is inaccurate or incorrect.

Sincerely,

\[\text{Signature}\]

L. Christopher Campany, AICP
Executive Director

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\(^3\) The description of the three elements identified here has been drawn from the introduction to the docket 7862 WRC Reply Brief dated October 25, 2013
PSB Docket 7862 Service List

I, Chris Campany, hereby certify that on the 16th day of January 2014, a copy of the attached filing regarding Docket No. 7862 was sent via U.S. Mail, postage prepaid, to the following:

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Chris Campany, Executive Director
Windham Regional Commission
139 Main Street, Suite 505
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The current TLG study contemplates the use of non-contaminated demolition debris as material for backfilling foundations during site restoration.\textsuperscript{200} Entergy VY has committed, however, in connection with a renewed CPG in this docket to bring in clean fill from off-site for use in backfilling foundations.\textsuperscript{201} If license renewal is approved, TLG’s next decommissioning-cost estimate will assume the use of clean fill and include the costs for such an assumption.\textsuperscript{202}

3. **Entergy VY Objects to Additional Commitments Concerning Decommissioning as Proposed by the Parties.**

Entergy VY has made commitments to restore the VY Station site to greenfield condition when the site is no longer used for nuclear purposes or non-nuclear commercial, industrial or similar uses consistent with the orderly development of the property. Together with the radiological-decommissioning requirements of federal law, these commitments will ensure that the VY Station is decommissioned safely and restored to permit future uses of the site. The additional requirements or conditions proposed by the parties should be rejected.

The Department has recommended that the Board impose a condition that would require the VY Station site to meet a radiological, site-release standard of 10-millirem (all pathways) and 4-millirem (groundwater pathway). The Board should reject this condition for a number of reasons.

\textsuperscript{200} Tr. 5/19/09 at 62 (Cloutier). There was some confusion in the record about the meaning of the term “rubbleization” in the context of backfilling foundations during site restoration. Mr. Cloutier understands the term to mean the use of contaminated materials to backfill foundations, a proposal that was made during Maine Yankee’s decommissioning. Tr. 5/19/09 at 61-62 (Cloutier). Mr. Vanags understands the term to mean the use of any on-site demolition debris, whether contaminated or not, for backfilling foundations. Vanags pf. at 11; Vanags sur. pf. at 4. The differences in definition are insignificant for purposes of this docket, however, because Entergy VY has agreed to use clean fill from off-site as fill material and will not use construction debris from on-site as previously assumed in the TLG study.

\textsuperscript{201} See Thayer reb. pf. at 4; tr. 5/20/09 at 72 (Thayer).

\textsuperscript{202} Cfr. tr. 5/20/09 at 71-72 (Thayer).