March 16, 2012

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

RE: Docket No. 7440

Dear Ms. Hudson:

Enclosed for filing with the Public Service Board are an original and seven copies of the Windham Regional Commission’s response to questions raised during the March 9, 2012 Status Conference by the Board about whether to scrub the current docket and continue, or to start “fresh” with a new record. The Windham Regional Commission recommends the latter.

Please let me know if you have any questions.

Sincerely,

Chris Campany, AICP
Executive Director

Enclosure

Cc: Docket 7440 Service List
Petition of Entergy Nuclear Vermont Yankee
LLC and Entergy Nuclear Operations, Inc., For
Amendment of their Certificates of Public Good
and other approvals under 10 V.S.A. §§ 6501-6504
and 30 V.S.A. §§ 231(a), 248 & 254, for authority
to continue after March 21, 2012, operation of the
Vermont Yankee Nuclear Power Station, including
storage of spent nuclear fuel

WRC Response to Board Questions Re: Status Conference March 9, 2012

WRC responds here to questions from the Board about whether to scrub the current docket and continue, or to start “fresh.” In making our recommendation WRC seeks efficiency while the Board addresses questions of whether and how the station might operate after March 21, 2012.

WRC was formally drawn into this CPG action on December 7, 2007 when Entergy VY provided us with prefile notification required by 30 V.S.A. 248(f) and Board Rule 5.402. Throughout this long period WRC has neither supported nor opposed continued operation of the VY Station, and reaffirms that position now.

WRC believes that if the Board denies the January 31, 2012 Entergy VY “Motion Seeking Issuance of a Final Decision and Order Granting CPG,” then the best course of action is to begin a new docket. It is our opinion that the choice between scrubbing the current docket and starting fresh will not affect whether the Station continues to operate, and that starting fresh will be a more efficient use of Petitioner, Party, and Board resources. We believe a new docket will expedite the matter to its conclusion, whatever that might be. We argue that the present docket has been established on unstable ground; much of the material entered into the record is or may be challenged on appeal as preempted; and much of the information in the record is stale. A new beginning will allow these issues to be addressed in a reasoned manner.

1 There seems to be general consensus that starting “fresh” or with a new record is the best way to proceed, and that consensus appears to include the Petitioner. During the March 9th Status Conference Board Member Burke asked Mr. Sanford Weisburst, representing the Entergy companies, “…isn’t it safer on the same basis time wise as well to start with a new record so that you don’t have to worry about what’s in there that could in fact created a problem later on down the road.” Mr. Weisburst responded, “…there were two ways of proceeding. One would be to start fresh and that would be the safer way. We think it’s still within the Board’s discretion. There may be even a consensus among the parties you have heard from today that’s the better way to go.”

2 WRC does not argue that the Motion should be affirmed or denied, but offers its opinion of how the docket can best be moved forward if the Board does not grant the Entergy VY motion.
The present docket has been established on unstable ground:

When Entergy VY first presented its prefile notification to WRC by letter on December 7, 2007 it identified relevant statutes in an Entergy VY authored caption, including 10 V.S.A. §§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 & 254, and it concluded the letter with a commitment to comply with Chapter 157 of Title 10 (WRC-TB-2-APP-D). From that initial point forward the prefile notification, actual petition, arguments, and briefs have been tangled around the various statutes, some of which have since been ruled preempted upon challenge by Entergy VY. If the docket had first been arranged in a manner that allowed severability it might be possible to untangle the established record, but Entergy VY presented its petition as an amalgamation that renders that simple solution as impossible (example: see witness list filed with petition). Since both preempted and non-preempted material is so tightly intertwined, and the Petitioner and other Parties have arranged arguments around the existing record, it would be exceedingly difficult to remove the underlying preempted or prohibited testimony and exhibits without disrupting the established narrative and concluding arguments. Further, the existing petition might now face a challenge from another Party as defective under Board rule 2.208, or such a challenge could be raised on appeal. It would be far more efficient to create a solid statutory foundation upon which to build a new docket than it would be to attempt to fix the structure underlying the existing record.

Much of the material entered into the record is or may be challenged on appeal:

Entergy VY has challenged some recommendations briefed by the Parties as potentially preempted, and has filed multiple arguments in federal court making expansive preemption claims. It is not possible to accurately identify every piece of information within the existing record that might later be challenged as preempted, and moving the docket forward with potentially tainted information could ensnarl the resulting Decision and Order in further legal challenges. It would be far more efficient to allow Entergy VY and other Parties to challenge material as it is entered into a new docket, rather than try to scrub the current docket of every scrap of objectionable material. Likewise, the very concept of “General Good” in 30 V.S.A. 231 will require careful definition at the development stage of the docket to avoid a potential challenge from Entergy VY or another party claiming that it is “standardless.” It will be very difficult to retroactively define what constitutes the General Good, especially in light of the points raised by Entergy VY in its initial brief dated July 17, 2009 (page 23), and counter arguments raised by WRC in its reply brief dated August 7, 2009 (page 25).

Much of the information in the current docket is stale:

This docket concluded with Reply Briefs in August, 2009. There have been many changes in the two and a half years since the record was created. It will be very difficult and time consuming to
identify and update all the stale material, and would be more efficient to simply start fresh and allow a new docket to build upon current and accurate information. At the July 9, 2012 status conference WRC identified a selection of material that we believe must be updated. The breadth of this short list makes it clear that the staleness of the existing record will render any decision made on the basis of the existing record equally stale, and that much updating is required. WRC has identified the following items in need of updates or clarification, most of which were read into the record at the March 9, 2012 status conference:

- **An updated Decommissioning Cost Analysis** was issued in January 2012, but has not been entered into the record. The new document should replace EN-TLG-2. The new document includes updated costs, projection of property taxes through SAFSTOR and decommissioning, and added detail about the level of structure removal (pipes).

- **An updated Spent Fuel Management Plan** was submitted in March, 2011, but it has not been entered into the record. This plan replaces EN-JKT-2 and a subsequent update of November 2008. Entergy VY also submitted a “Draft Spent Fuel Loading Schedule” listed as “Attachment 2” on June 19, 2009 and then updated it by letter on September 15, 2010. These updates were promised during the technical hearings but not delivered in time to be tested within the hearings, and thus neither of those loading schedules are in the official record. WRC has requested that the latest Spent Fuel Management Plan be rejected by the Board as incomplete and non-responsive (letters to the Board dated April 1, 2011 and May 6, 2011).

- **An update on plans for eventual shipment of spent nuclear fuel to Yucca Mountain in Nevada.** Throughout the technical hearings, and through the filing of Reply Briefs, it was argued that spent nuclear fuel from the operation of Vermont Yankee would eventually be shipped to a planned permanent repository at Yucca Mountain in Nevada. The NRC has since closed out its technical review of a pending license application for the Yucca Mountain facility, and the Atomic Safety and Licensing Board has suspended its adjudicatory hearing on the application.³

- **An update on plans to replace the aging condenser.** Site vice-president Michael Colomb stated the current condenser “…would not be reliable through the 20 year license extension period,” and that it would be replaced in the 2013/2014 timeframe as part of regular outages. (Transcript, May 26, 2009 page 115) The scheduling of large upgrades such as this must be accomplished well in advance to fabricate the needed components and schedule specialized labor, and they must be included in the Entergy VY rolling 15 year budget process identified by Jay Thayer (Transcript, May 21, 2009, page 23).

An Update on the availability of a replacement transformer. Entergy VY had planned to use an on-site spare transformer capable of handling 80% of the load, but in a filing correcting the record on September 15, 2010 (but not yet entered into the record). Entergy VY stated it had decided to use a transformer at the Pilgrim Nuclear Power Station instead. There appears to be no information available about this transformer or its capabilities within the record. Entergy VY identified the change as an update to a WRC discovery question (WRC: EN.1-14).

An update on litigation with DOE for recovery of damages related to the storage of spent nuclear fuel. The decision of the United States District Court dated January 19, 2012 includes footnote 26 on page 78 that states damages were awarded in September 2010. This update may have a bearing on the budget for SAFSTOR and decommissioning, and thus has clear land use implications.

An update on corporate reorganization. When Reply Briefs were filed in docket 7440 Entergy Corporation was engaged in a plan to reorganize many of its assets, and the reorganization was being considered separately in docket 7404. That request was denied by the Board on June 24, 2010. It is unclear how this change affects docket 7440, or if other changes are contemplated.

An update on Station reliability in light of at least four tritium leaks and related structural and operational issues identified in docket 7600.

Clarification of the role for the studies created by Act 189, and an unknown role for the initial report of the Public Oversight Panel and related testimony, and for the supplemental POP report filed on July 20, 2010 but not yet entered into docket 7440. This material will help to define the reliability of the Station going forward, as well as the financial benefit and land use issues.

Additional discovery regarding reliability in light of the Entergy VY April 20, 2009 response to WRC’s single round of discovery questions in which the company stated “Entergy VY objects to the extent that the information requested in a question is or may be relevant to an issue—the reliability of the VY Station—over which the Vermont General Assembly has asserted direct authority under Act No. 189 of the Session Laws of the 2007-2008 legislative session…Discovery in this docket on reliability issues would, furthermore, be duplicative of the review and document-disclosure process under Act No. 189, causing Entergy VY to expend double resources on an issue that is being addressed under Act No. 189.”

An update on the value and growth of the Decommissioning Trust fund which will determine if and when the Station can be decommissioned.
An update on the value of the Revenue Share Agreement in light of changes to projections of electric energy prices.

An update on the availability of a Power Purchase Agreement, if any such agreement has been reached. The record also needs a review of what role the value or lack of a PPA can play in the preponderance of the record.

Consideration of the value of testimony filed by Jay Thayer and Michael Colomb, both of whom have since left the company.

Conclusion:

WRC appreciates the Board’s interest in seeking Party considerations before making critical decisions about how to move this matter forward. WRC urges the Board to begin anew\(^4\). WRC repeats here that we neither support nor oppose continued operation, but instead seek a process that will yield a reasoned conclusion based on the facts and merits, rather than an appeal adjudicated on procedural technicalities. WRC asks that whatever course the Board chooses to take be clear and well defined, and easily understood by the public.

Dated at Brattleboro, Vermont this 16\(^{h}\) day of March, 2012.

Windham Regional Commission

By: ________________

Christopher Campany
Executive Director

\(^4\) WRC reserves the right to seek reimbursement from Entergy VY for expenses incurred by WRC in this docket, or in a new docket that flows from inefficient management by the Petitioner of this docket.
CERTIFICATE OF SERVICE

I, Ashley Collins, hereby certify that on the 16th day of March 2012, a copy of the attached filing regarding **PSB Docket No. 7440** 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

John Beling, Esq., Director of Public Advocacy  
Sarah Hofmann, Esq., Jeanne Elias, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier VT 05620-2601

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 C. Juman, Esq., Kathleen M. Sullivan, Esq., Sanford I. Weisburst  
Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue, 22nd Floor  
NY, NY 10010

Robert B. Hemley, Esq., Matthew B. Byrne, Esq.  
Gravel and Shea PC  
PO Box 369  
Burlington, VT 05402-0369

William B. Glew, Jr. Esq.  
Associate General Counsel—Regulatory Entergy Corporation  
1776 eye Street, N.W. – Suite 907  
Washington, DC. 20006  
(Mail Undeliverable as of 6-9-10)

Jeanne Cho, Esq.  
Entergy Nuclear Operations, Inc  
440 Hamilton Avenue  
White Plains, NY 10601

Judith Dillon, Esq.  
Vermont Agency of Natural Resources  
103 South Main Street,  
3rd Floor Center Building  
Waterbury, Vermont 05671-0301

Brian Lederer, Esq.  
Law Offices of Brian Lederer  
3003 Van Ness Street, NW, Suite W228  
Washington, DC 20008  
(For IBEW Local No. 300)

George Clain, President  
IBEW Local No. 300  
3 Gregory Drive  
South Burlington, VT 05403-6061

Peter Zamore, Esq.  
Benjamin Marks, Esq.  
Sheeheny Furlong & Behm, PC  
30 Main Street - P.O. Box 66  
Burlington, VT 05402 (GMP)

Donald J. Rendall, Jr., Esq.  
Green Mountain Power Corporation  
163 Acorn Lane  
Colchester, VT 05446 (GMP)

Dale A. Rocheleau, Esq.  
Central Vermont Public Service Corporation  
77 Grove Street  
Rutland, VT 05701 (CVPSC)

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

Robert M. Fisher, Esq.  
Fisher & Fisher Law Offices  
114 Main Street – PO Box 621  
Brattleboro, VT 05302-0621  
(Town of Brattleboro)
Jared M. Margolis  
Attorney at Law  
243 Cilley Hill Rd  
Jericho, VT 05465  
(New England Coalition, Inc.)

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

J. Randall Pratt, Manager – Government Relations  
VT Electric Cooperative, Inc.  
42 Wescom Road  
Johnson, VT 05656

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  
(Vermont Public Interest Research Group)

Sandra Dragon, President  
Associated Industries of Vermont  
P.O. Box 630  
Montpelier, VT 05601

Jamey Fidel, Esq.  
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

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