

TOWN OF BRATTLEBORO

United States Nuclear Regulatory Commission
Office of Administration
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SUBJECT: **Docket No. NRC-2015-0004**
Docket No. 50-271
Entergy Nuclear Operations, Inc. Vermont Yankee Nuclear Power Station Post-Shutdown Decommissioning Activities Report

Comments of the Town of Brattleboro

The Town of Brattleboro (Town) provides the following comments on the Post Shutdown Activities Report (PSDAR) submitted to the NRC on December 19, 2014 as required by Title 10 of the Code of Federal Regulations (CFR) 50.82, "Termination of License," paragraph (a)(4)(i) for the Vermont Yankee Nuclear Power Station (VYNPS), including the Site Assessment Study (SAS) an obligation under the settlement agreement (Agreement) between the State of Vermont (State), Entergy Nuclear Vermont Yankee and Entergy Nuclear Operations (Entergy), negotiated in December 2013. In preparing this response we have reviewed comments from the State of Vermont and Windham Regional Commission (WRC) submitted to the Nuclear Regulatory Commission (NRC) on the above captioned matter. The Town concurs with the state and WRC. We ask that the substance of our combined comments be considered closely by the NRC. The Town's comments are informed by the burdens imposed on our community as a direct consequence of decisions made by Entergy with regard to Post-Shutdown Decommissioning Activities and validated by the regulatory process of the NRC.

As the regional center for Windham County, Brattleboro stands to suffer the biggest indirect economic impact from the plant closure and given the proximity of the site (just under seven miles from the center of Brattleboro) Brattleboro remains concerned about the ongoing public safety issues with the plant, the length of time and the cost involved in radiological decontamination and site restoration. We have specific comments in relation to the PSDAR and SAS below.

1. **SAFSTOR Economic Impact versus DECON:** The SAS outlines a SAFSTOR approach to decommissioning with the transition to 'dormancy' proposed for 2020. We take on good faith Entergy VY's commitment to "prompt decommissioning" while seeking the SAFSTOR method. We further note that even an optimistic date for commencing dismantling and decontamination is set at 2040. In our view the community's public safety and economic future are best served by pursuing DECON. We understand that SAFSTOR offers the possibility of managing a dormant facility while the Decommissioning Trust Fund (DTF) is allowed to accumulate. We believe the risks and uncertainty associated with such an approach unfairly burdens the host community.

2. **Reliance on the Generic Environmental Impact Statement (GEIS):** The PSDAR responds to socio-economic conditions created by the decommissioning and site restoration process by concluding that under the analysis used by the Generic Environmental Impact Study (GEIS) "economic impacts are neither detectable nor destabilizing and that mitigation measures are not warranted" (p29). Yet, the discussion of the GEIS establishes that large plants in rural areas closing early and using the SAFSTOR

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option were *the likeliest to have negative impacts* (emphasis added). The conclusion reached on economic impacts in the PSDAR do not meet the requirements of the National Environmental Policy Act (NEPA), nor the expectations set out in the NRC Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions [7590-01-P] (NRC 2004).

The Policy Statement on EJ defines the “NRC’s obligation is to assess the proposed action for significant impacts to the physical or human environment” (NRC 2004, p28). The discussion of Environmental Justice (EJ) found in NUREG-1437, Supplement 30 Volume 1 (NRC 2007) under the ‘No-Action Scenario’ (i.e. plant closure) is perfunctory with regard to the socioeconomics of plant closure and we believe does not meet the intent of guidance contained in the Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions (NRC 2004). No ‘impacted area’ was identified in Windham County despite the presence of a census tract which qualifies as a Low-Income Community’ (LIC) under the non-metropolitan definition provided for under the Community Renewal and Tax Relief Act 2000 which defines LICs for the purposes of being eligible for New Market Tax Credits (NMTCs) where family income **does not exceed 80 percent** of statewide family income (emphasis added). Census Tract 9685 is found in Brattleboro bounded by the Connecticut River to the east, the Town Line with Guilford to the South, Western Avenue/ Marlboro Rd (State Route 9), Grove Street and Harris Place to the north and Maple and Guilford Streets to the west.

Under NRC staff guidance, a minority or low-income community is identified by:

[C]omparing the percentage of the minority or low-income population in the impacted area to the percentage of the minority or low-income population in the County (or Parish) and the State. If the percentage in the impacted area significantly exceeds that of the State or the County percentage for either the minority or low-income population then EJ will be considered in greater detail. “Significantly” is defined by staff guidance to be 20 percentage points

(EJ Policy, p31-32).

2010 Census Tract Number	Census Tract Metro or Non-Metro Designation Based on OMB	Census Tract Poverty Rate (%)	Census Tract % of Benchmarked Median Family Income (%)	Census Tract Unemployment Rate (%)	Does Census Tract Qualify on Poverty Criteria >=20%?	Does Census Tract Qualify on Median Family Income Criteria <=80%?	Does Census Tract Qualify For NMTC Program on Poverty or Income Criteria?
50025968500	Non-metropolitan	16.2	64.4	9.4	no	yes	yes

The table above summarizes American Community Survey (ACS) data for Census Tract 9685 establishing that the median household income is 64 percent of the statewide median family income (see: [http://www.cdfifund.gov/what we do/programs_id.asp?programID=5](http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5) NMTC 2006-2010 American Community Survey Eligibility Data .xls).¹ Under NRC policy this meets the definition of ‘significantly’— thus requiring EJ to be considered in greater detail. In Appendix J of Supplement 1 to NUREG-0586 (NRC

¹ For HUD LMI census blocks in Brattleboro mapped see: <http://anrmaps.vermont.gov/websites/ACCD/lmi/>.

2002) NRC staff prepared a table of 'Selected Socioeconomic Indicators' which states that these data were "used to develop the conclusions that were given in Section 4.3.13" (see Table J-5, NRC 2002, p J-8). County Median Family Income (MFI) as percentage of state MFI was employed as a measure. In response to comment G.3 the Policy Statement on EJ states that the NRC uses the Census "block group" as the geographic area for evaluating census data. A block group is a sub-set of the larger tract. Therefore, census tract 9685 is a viable geographical unit for comparison with state and county data. "In accordance with staff guidance, the impacted area may be compared to *either the State or County data*" (emphasis added) (NRC 2004, p25). No description of "greater detail" with regard to this aspect of NEPA compliance was found in available NRC resources. On its face the treatment of these concerns in NUREG-1437, Supplement 30 Volume 1 (NRC 2007) is deficient.

These methodological shortcomings further illustrate the State's contention specifically in regard to socioeconomic impacts and EJ:

NEPA does not allow the NRC to permit Entergy to proceed with its decommissioning activities without further analysis by the NRC of the potential environmental impacts of those activities. The PSDAR as it currently stands is insufficient to identify and assess the site-specific environmental impacts of Entergy's decommissioning activities to facilitate proper planning.

(Comments, State of Vermont 2015, p43)

We concur with WRC on the issue of assumed impacts to property tax revenues (a critical source of social service funding for vulnerable populations). The Town confronts reduced property tax revenues and abrupt increases in social service demands as a consequence of decommissioning.

3. Decommissioning Trust Fund Management: The Town of Brattleboro remains concerned that Entergy proposes utilizing the Decommissioning Trust Fund (DTF) for spent fuel management while simultaneously pursuing cost recovery actions against the Department of Energy (DOE). As currently structured, failure to collect from the DOE impacts the growth of the DTF. Spent fuel management should more properly be considered an operational cost, with no impact on the DTF. Brattleboro was reassured that Entergy is "pursuing a funding strategy for decommissioning that would rely on use of the... [DTF] and additional lines of credit"². Brattleboro would prefer that the DTF be restricted to narrowly defined decommissioning tasks, and that spent fuel management functions be paid for through a dedicated fund or line of credit, able to be reviewed by all parties to the Agreement. If and when ENTERGY recaptures further costs from DOE, the reimbursement (net any associated legal and administrative costs) can be shown in such a single purpose fund or credit line. ENTERGY must be able to show that ongoing disputes concerning spent fuel management or any other non-decommissioning activities do not have a negative impact on the growth of the DTF.

While Entergy VY has established a separate Site Restoration Fund (SRF) the management of this fund should be fully separate from the DTF. It remains unclear as to whether some Site Restoration expenses still appear to be dependent on growth in the DTF. Site restoration should ensure full economic re-use of the land (including the removal of all underground structures and pipes). The SAS is a significant commitment to summarizing in one document the history of the VYNPS site. Brattleboro understands

² See Draft Minutes, Vermont Nuclear Decommissioning Citizens Advisory Panel (NDCAP) October 30, 2014

the challenge of needing to wait for the plant to shutdown to conduct a more meaningful assessment of radiological and hazardous waste contamination. The costs and scope of work for site restoration in keeping with the intent of the Agreement is still clouded with uncertainty and we ask that continued analysis and decision-making allow for public input.

4. Adequacy of the SRF: The commitment in the Agreement to establish a SRF is inadequate to meet the forecasted costs of such work. Entergy VY has committed a \$20 million guarantee by 2017 to assure fund growth up to \$60 million. Meanwhile the combined cost of decommissioning, spent fuel management, and site restoration have been estimated to cost more than a billion dollars with site restoration expected to exceed \$225 million. The NRC should insist on accurate cost estimates based on site-specific EIS and then set meaningful fund growth targets to meet this need.

5. Licensing Agreement Requests (LARs) re: Emergency Planning Zone and Emergency Response Organization: Brattleboro joins with the WRC and the State of Vermont in seeking to maintain the existing EPZ until all spent fuel is placed in dry cask storage on-site or is transported from the site.³ The State contends that the NRC has acted in haste in already granting Entergy a requested exemption from the Licensing Agreement requirements with regard to the Emergency Response Data System (ERDS) and Emergency Planning Zone (EPZ). We see that this issue is now subject to litigation and therefore limit our remarks to the likely impact on the health and safety of our community and emergency services staff. The Town believes this poses an unacceptable risk to the public and emergency services personnel. Brattleboro also believes that maintenance of an appropriate RERP is an operational cost and therefore the DTF should not be used to pay RERP commitments.

Thank you for your consideration of the Town's comments. Please contact me if you have any questions or require any additional information.

Sincerely,



Peter B Elwell
Town Manager

CC: Town of Brattleboro Selectboard
Christopher Recchia, VT Commissioner of Public Service
David Mears, VT Commissioner of Environmental Conservation
Dr. William Irwin, VT Department of Health

³ Ibid.