

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7862

Amended Petition of Entergy Nuclear Vermont Yankee,) Hearings at Barre, Vermont
LLC, and Entergy Nuclear Operations, Inc., for) February 11-13, 2013
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) Hearings at
Vermont Yankee Nuclear Power Station, including the) Montpelier, Vermont
storage of spent nuclear fuel) February 14, 15, 18-22, 25, 26,
June 17-21 and 24-28, 2013,
and January 30 & 31, 2014

Order entered: 3/28/2014

PRESENT: James Volz, Chairman
David C. Coen, Board Member
John D. Burke, Board Member

APPEARANCES: *See Attachment A*

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I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") conditionally grants a request from Entergy Nuclear Vermont Yankee, LLC ("ENVY") and Entergy Nuclear Operations, Inc. ("ENO") (jointly, "Entergy VY" or the "Company") to amend their Certificate of Public Good ("CPG") to authorize Entergy VY to own and operate the Vermont Yankee Nuclear Power Station ("VY Station" or the "Plant") in Vernon, Vermont, until December 31, 2014. We find that Entergy VY's ownership and operation of the VY Station from March 21, 2012, through the end of this year, subject to a Memorandum of Understanding ("MOU")¹ among Entergy VY, the

1. Over the years, Entergy VY has entered into several memoranda of understanding in various proceedings. Many of these remain relevant and are cited herein. Unless otherwise specified, as used in this Order, "MOU" refers to the Memorandum of Understanding entered into by Entergy VY, the Department of Public Service, and the Agency of Natural Resources in this proceeding and filed with the Board on December 23, 2013. Other memoranda of understanding are referred to by the appropriate docket in which they were filed, e.g., the "Docket 6545 MOU."

Vermont Department of Public Service ("Department" or "DPS"), and the Agency of Natural Resources ("ANR"), is in the best interest of the state of Vermont and thereby will promote the general good.

Extending the duration of the CPG under the terms of the MOU will provide several material benefits to the state that would not be attainable for Vermonters absent the MOU.

Specifically, these benefits include:

- Entergy VY commits to pay the State \$10 million over the next five years to promote economic development in Windham County, which will aid the area as jobs are lost following the closure of the VY Station.
- Entergy VY agrees to conditions that will ensure adequate site restoration and increase the likelihood that the site will be available for other uses more rapidly than the Nuclear Regulatory Commission ("NRC") would require. These include:
 - (1) commitment to complete a site assessment study by the end of this year and to a process for developing the appropriate standard for site restoration that will be determined by the Board;
 - (2) establishment of a separate, \$25 million fund specifically for site restoration, supported by a guarantee by Entergy VY's parent corporation to provide additional funds if the site restoration fund falls below \$60 million; and
 - (3) a commitment to commence site restoration promptly after completing radiological decommissioning.²
- Entergy VY will pay \$5.2 million in to the Clean Energy Development Fund ("CEDF") for clean energy development activities, with half of the funds to be used to benefit Windham County.
- Entergy VY has agreed to December 31, 2014, as the date on which its rights under this CPG to own or operate the VY Station for purposes other than decommissioning will terminate.³

We find that the realization of these benefits is in the best interests of Vermonters, notwithstanding the significant concerns raised by numerous parties in this proceeding. The

2. In the Settlement Agreement among the MOU signatories, Entergy VY also committed to commence decommissioning within 120 days after it has made a reasonable determination that the funds in the Decommissioning Trust Fund are adequate to complete decommissioning and remaining spent nuclear fuel ("SNF") management activities.

3. The MOU specifies certain factual circumstances that could lead to operation for a short period thereafter.

value of these benefits is complemented by the short duration of the permission we are granting Entergy VY. This limited period of time is likely not longer than the interval of time we would have allowed Entergy VY for winding up its operations had we decided, in the absence of the MOU, to deny the Company's request to extend its time for operating in Vermont.

In 2002, the Board approved the sale of the VY Station to Entergy VY and issued a CPG authorizing ENVY to own and ENO to operate the VY Station. That right, however, was limited to operating the VY Station only until March 21, 2012, unless a new or renewed CPG for Entergy VY was first issued.⁴ Entergy VY initiated this proceeding seeking such authorization.

The process of reviewing Entergy VY's request for, what at that time was a 20-year CPG, began in 2008 and has lasted over six years. In the last two years, it has involved unusually contentious litigation. During that time, significant concerns have been raised over whether Entergy VY's long-term operation and ownership of the VY Station would promote the general good. Principally, these questions have related to whether Entergy VY has been, and could, going forward, be, a company that lives by its commitments, adheres to legal requirements, including statutes and rules, provides accurate and timely information, and generally is a fair partner for Vermont. This question — which we examine in all proceedings where companies seek authorization to do business regulated by the Board — typically requires us to examine the company's performance and expectation about future activities and its willingness to deal candidly with its regulatory stakeholders.

In both of these areas, the evidence in this case has raised substantial questions. In its twelve years of operating in Vermont, Entergy VY has failed to comply with numerous Board orders and statutory requirements. It has failed to follow procedural requirements that protect the integrity of Board proceedings. The Company has engaged in unacceptable conduct that erodes public trust and confidence in its capacity to act in good faith and to engage in fair dealing; an investigative report prepared by Vermont's Attorney General concluded that Entergy VY "repeatedly misled State officials with direct misstatements and repeatedly failed to clarify

4. See Docket 6545, Order of 6/13/02. The CPG authorized ownership and operation of the VY Station after March 21, 2012, solely for the purpose of decommissioning. Docket 6545, Order of 7/11/02 at 17.

misperceptions."⁵ The Company's sustained record of misconduct has been troubling to observe over the years and has continued to trouble us as we determine whether to grant Entergy VY a license to operate.

If Entergy VY were planning to operate the VY Station for another twenty years as originally requested, its track record may well have led us to find that ownership and operation would not promote the general good. However, for economic reasons, Entergy VY has now decided to cease operations. The MOU reflects this decision. While its decision to cease operations by the end of next year does not excuse Entergy VY's past bad conduct, the decision does alter the perspective from which we contemplate that conduct, given that we are no longer assessing the legal and regulatory implications of granting an operating license for the long term. Considered in light of the short operational period remaining and the closure secured by the MOU on numerous outstanding matters, we find that granting the CPG extension subject to the conditions set out in the MOU is reasonable and in the best interests of the State.

Parties also have raised questions about other aspects of Entergy VY's continued operation of the VY Station, primarily the effect the thermal discharge from the VY Station will have on the Connecticut River. The operation of the VY Station uses large amounts of water for cooling the steam that is used to generate power. This water is discharged into the Connecticut River and is regulated by a permit under the National Pollutant Discharge Elimination System ("NPDES"). Several parties, including ANR, raised concern that even the authorized discharge from the VY Station is adversely affecting fish populations. Under the MOU, these issues will be addressed through the NPDES permitting process. We find this to be an acceptable — if imperfect — outcome, particularly since the remaining operating period and potential to impact the fish population is of limited duration.

Other parties had questioned whether Entergy VY could assure us that it had the financial resources to fulfill its commitment made at the time it acquired the VY Station to fully restore the site after the facility is closed. The MOU addresses these concerns in two ways. Entergy VY has agreed to a process under which the scope of its site restoration obligations would be fully defined. Entergy VY has also agreed to set aside \$25 million earmarked for site restoration.

5. Exh. Board-5 at 8.

These are material commitments that will help ensure timely and adequate restoration of the VY Station site.

Finally, it is important for the public to understand the limits of the Board's jurisdiction, and therefore what this decision does not do. The operation of the VY Station has long been controversial within Vermont. In this proceeding, the Board has heard from many members of the public urging us to direct the closure of the VY Station, on the one hand, or asking that we preserve the benefits of the power it generates, on the other. However, by law, this regulatory review necessarily focuses on the more narrow question of whether granting Entergy VY continued authority to own and operate the VY Station through the end of 2014 would promote the general good of the state. Therefore, we have not considered questions such as whether to order the closure of the VY Station, the merits of nuclear power, or any potential radiological safety concerns about the VY Station — these matters are outside our purview to regulate under current state and federal law. Rather, the issue for the Board is whether to authorize Entergy VY's continued ownership and operation of the VY Station for a brief period for purposes other than decommissioning.

II. BACKGROUND

A. Procedural History

On June 13, 2002, the Board issued an Order in Docket 6545 authorizing the sale of the VY Station from the Vermont Yankee Nuclear Power Corporation ("VYNPC") to Entergy VY and granting a CPG authorizing ENVY to own and ENO to operate the VY Station until March 21, 2012 (the "6545 CPG").

On March 3, 2008, Entergy VY filed a petition, which became Docket 7440, for an amendment to the 6545 CPG and other approvals required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 & 254, for authority to continue after March 21, 2012, its ownership and operation of the VY Station, including the storage of spent-nuclear fuel.

The Board held evidentiary hearings on Entergy VY's petition in May and June of 2009 and the parties filed final briefs on August 7, 2009. Under Section 248(e)(2) as it then existed, the Board was not, however, permitted to issue a final Order absent an affirmative vote by the

legislature to allow the Board to do so. As a result, several parties requested that the Board issue its decision not as a final Order, but instead as a report to the legislature. This request was pending with the Board when Entergy VY discovered tritium leaks at the VY Station and disclosed the existence of underground pipes containing radionuclides, which Entergy VY, under oath in Docket 7440, had testified were not believed to exist. The leaks prompted the Board to open Docket 7600 to consider what action, if any, the Board could or should take as to matters within its jurisdiction. The pipe disclosure caused the Board to require Entergy VY to correct the evidentiary record in Docket 7440 and discovery requests and to hold the docket in abeyance pending receipt of this information. The parties were requested to inform the Board when the record had been corrected and to propose how the Board should proceed to consider the changed record. Entergy VY filed its corrections in September 2010 but the parties did not file a proposal for moving forward in the docket, so the proceeding remained stayed.

In April, 2011, Entergy VY filed suit in federal district court challenging certain provisions relevant to the proceedings in Docket 7440. On January 20, 2012, the United States District Court for the District of Vermont entered a Decision and Order in *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. v. Shumlin et al*, Docket No. 1:11-cv-99 (the "District Court Decision").

On January 31, 2012, Entergy VY filed a Motion Seeking Issuance of a Final Decision and Order Granting a CPG in Docket 7440. On March 29, 2012, the Board issued an Order denying Entergy VY's motion on the grounds that it did not have a sound record on which to base a decision and directing that Entergy VY file a new amended petition.

On April 16, 2012, Entergy VY filed a new petition for an amended CPG and other approvals required under 30 V.S.A. § 231(a) for authority to continue after March 21, 2012, its ownership and operation of the VY Station, including the storage of spent nuclear fuel (Entergy VY's "First Amended Petition"). In response to this Amended Petition, the Board opened this proceeding, Docket 7862. The First Amended Petition requested authorization to operate until March 21, 2032, or 20 years beyond the Docket 6545 CPG's expiration date.

On June 22, 2012, Entergy VY filed a Motion for a Declaratory Ruling Prescribing the Scope of the Proceeding ("Entergy DR Motion"). In the Entergy DR Motion, Entergy VY laid

out its arguments that certain potential matters which could come under consideration in the proceeding were preempted by federal law, and asked the Board to issue a declaratory ruling on the scope of the proceedings outlining what matters it determined to be preempted. On January 7, 2013, the Board issued an Order denying Entergy VY's request for a general ruling and instead indicating that it would review Entergy VY's objections in context of the specific evidence being objected to.

On October 5, 2012, the Board issued an Order granting intervenor status to the following entities which were parties in Docket 7440:⁶ Conservation Law Foundation ("CLF"); Vermont Natural Resources Council and the Connecticut River Watershed Coalition (together, "VNRC/CRWC"); Vermont Public Interest Research Group ("VPIRG"); Windham Regional Commission ("WRC"); New England Coalition, Inc. ("NEC"); Green Mountain Power Corporation ("GMP"); Central Vermont Public Service Corporation ("CVPS"); Associated Industries of Vermont; Vermont Electric Cooperative, Inc.; TransCanada Hydro Northeast, Inc.; and the International Brotherhood of Electrical Workers, Local Union 300.⁷ In addition, on April 26, 2013, the Board granted intervention to the Town of Vernon.

Two public hearings were conducted on November 7, 2012, in Vernon, Vermont and on November 19, 2012, at locations statewide via Vermont Interactive Technologies services ("VIT").

On November 21, 2012, Entergy VY filed a Motion for Partial Summary Judgment on water quality issues ("Entergy SJ Motion"). The Entergy SJ Motion requested that the Board issue a summary judgment on certain issues related to water quality on the basis that the issues had been previously litigated before the Vermont Environmental Court and the Vermont Supreme Court. This motion was denied by the Board on June 19, 2013. Also on November 21,

6. Pursuant to the Board's Orders of March 29, 2012, in Docket 7440 and May 4, 2012, in this Docket, parties in Docket 7440 were to be granted automatic intervenor status, subject to the same limitations, if any, imposed upon the scope of their intervention in Docket 7440, if they filed with the Board a notice of appearance and statement of intent to be a party.

7. Our October 5, 2012, Order inadvertently omitted ANR as a party granted intervention. ANR had filed a notice of appearance (although it did not submit a formal statement of intent to be a party) and otherwise evidenced its intent to be a party in this proceeding and has been treated as a party throughout. We had intended to grant ANR party status as part of the earlier Order. To remove any uncertainty, we clarify that ANR is a party to this proceeding.

2012, Entergy VY filed an Objection to Admission of Prefiled Direct Testimony and Exhibits Submitted on Behalf of the Department of Public Service, Conservation Law Foundation, and New England Coalition (the "Entergy Objections Motion"). In the Entergy Objections Motion, Entergy VY objected to several elements of testimony filed by a number of parties in the Docket on the grounds that they were preempted by federal law. The objections included in the Entergy Objections Motion were taken under advisement by the Board.⁸

On February 8, 2013, the Department filed a Motion in Limine which requested that the Board require Entergy VY to state the federal authority it was relying on and the specific grounds when objecting to the admission of evidence on the grounds of preemption. On February 11, 2013, the Board issued an oral ruling directing Entergy VY to specify the grounds and basis of authority of its preemption objections.

Technical hearings were held from February 11, 2013, to February 26, 2013, and from June 17, 2013, to June 28, 2013, at the Barre Municipal Auditorium in Barre, Vermont, and at the Board's Hearing Room in Montpelier, Vermont.

An initial set of proposed findings of fact and legal briefs were filed by Entergy VY, the Department, ANR, CLF, VNRC/CRWC, VPIRG, WRC, and NEC on August 19, 2013.

On August 27, 2013, Entergy VY announced that it had decided to close the VY Station by the end of 2014 and amended its petition to request permission to own and operate the VY Station through December 31, 2014 (Entergy VY's "Second Amended Petition").

On October 25, 2013, Reply Briefs addressing the Second Amended Petition were filed by VNRC/CRWC, CLF, NEC, VPIRG, Entergy VY, the Department, ANR, and WRC. Comments on the Reply Briefs were filed by the Department, NEC, VPIRG, Entergy VY, and WRC on November 22 and 25, 2013. In its November 22 filing, the Department informed the Board that it was in the process of negotiating a memorandum of understanding with Entergy VY and promised to update the Board as negotiations progressed.

On December 23, 2013, the Department filed an MOU (the executed MOU) among itself, Entergy VY, and ANR (collectively, the "MOU Signatories"). In the MOU, the MOU

8. The Board's determination on this and other matters related to the preemption objections of Entergy VY are discussed in pages 18 through 25, below.

Signatories agree that the extension of Entergy VY's CPG to operate through December 31, 2014, subject to the conditions described in the MOU, is in the general good of the state.

On January 2, 2014, the Board convened a status conference and thereafter issued an Order re: Schedule for Further Proceedings laying out the schedule for further proceedings in the Docket.

On January 14, 2014, a public hearing on the MOU was held at locations statewide via VIT.

On January 30 and 31, 2014, technical hearings on the MOU were convened in the Board's hearing room in Montpelier, Vermont. Entergy VY and the Department submitted additional prefiled testimony in advance of the technical hearing, and NEC submitted a prehearing memorandum.

On February 14, 21, and 24, 2014, final briefs regarding the MOU were submitted by Entergy VY, the Department (for itself and ANR), VNRC/CRWC, NEC, WRC, VPIRG and CLF.

B. Public Comments

Over the course of this Docket, the Board has received numerous public comments, in both written form and from speakers at the three public hearings. The Board sincerely appreciates receiving these comments from the many members of the public who took the time to share their views and perceptions. These comments have helped to guide the Board's attention to specific issues that otherwise might not have been raised in the case.

It is important to note, however, that Vermont law requires the Board to base its decision on the content of the formal evidentiary record as developed by the parties through the contested case process. Public comments cannot be treated as such formal evidence because they are not delivered under oath or subject to cross-examination pursuant to applicable rules of evidence and procedure. Nevertheless, public comments play a crucial role in helping ensure a thorough exploration of the factors which the Board should consider in crafting the evidentiary record. These comments also facilitate a better understanding for the Board of how its decision is likely to affect citizens across the State.

Prior to Entergy VY's announcement that it will close the VY Station at the end of 2014, the Board had received hundreds of public comments on both sides of the question of whether to renew Entergy VY's CPG. Of those urging the Board not to grant a CPG, a number of the comments were focused on radiological safety concerns — a subject which the Board is precluded from considering as a matter of federal law. However, other grounds for opposing the extension of a CPG addressed significant issues that are within the Board's jurisdiction, such as the impact of the VY Station's thermal discharge on the Connecticut River and whether or not Entergy VY has been and can be a fair partner to the State of Vermont. Members of the public who supported the issuance of a CPG primarily pointed to the economic benefit of the Plant and its value as a significant generator of low-carbon electrical power.

Subsequent to Entergy VY's submission of its request for an amended CPG and the execution of an MOU with the Department and ANR, public comments focused on a number of key areas. Many members of the public expressed concern that, given its past actions, Entergy VY could not be relied upon to keep the new commitments made in the MOU in addition to its existing obligations to the State of Vermont. Several commenters suggested that given the widely held perception in Vermont that Entergy VY is untrustworthy, the Company should not be granted a CPG under any circumstances.

Other commenters found the MOU inadequate or insufficient and recommended that the Board either reject the MOU on that basis or impose additional conditions on the Company. These commenters pointed to concerns regarding the safety of the decommissioning process and its ultimate outcome, the adequacy of funding for decommissioning, and the absence of a specific timetable for decommissioning. A number of commenters expressing these views specifically urged the Board to require that Entergy VY immediately remove all spent fuel from the spent fuel pools and place it into dry cask storage. Other commenters urged the Board to prevent Entergy VY from utilizing SAFSTOR⁹ as a decommissioning method, and to instead require Entergy VY to commence decommissioning immediately upon the Plant's closure. Another area of concern for those who found the MOU insufficient was that it potentially allows Entergy VY to continue discharging significant amounts of waste heat into the Connecticut River. These

9. A detailed description of this method of decommissioning may be found in Finding 208 on p. 82.

commenters urged the Board to require that Energy VY operate the VY Station in closed cycle cooling mode for the remainder of the operational period to avert impacts from the thermal pollution.

Many of the members of the public who called upon the Board to approve the MOU pointed to the economic benefits provided by the MOU. These commenters pointed specifically to the economic transition funding included in the MOU, as well as the release of additional funding for the CEDF. These funds have the potential to help the region adjust to the economic impacts of the closure of the Plant.

Other supporters of the MOU pointed to the perceived benefits of maintaining operation of the VY Station for an additional nine months when compared with an immediate shutdown. These commenters emphasized the continued supply of low-carbon electricity that the Plant will produce, as well as the salaries that will be paid to Plant employees and taxes paid to the community and state. These commenters also noted that an additional nine months of operation will provide employees at the Plant and other workers whose incomes depend on Plant operation with more time to plan for and adjust to the Plant's eventual closure.

In addition to the above concerns, many other specific points have been raised by members of the public to which it is not possible for us to individually respond. This Order reflects that many of these issues were discussed at length during the course of our proceedings and have been central to our review of the MOU and our final decision.

C. Positions of the Parties

Entergy VY

Entergy VY maintains that the operation of the VY Station through the end of 2014, pursuant to the terms of the MOU, is in the general good of the State and thus an amended CPG should be granted. Entergy VY contends that the MOU further strengthens the argument that a CPG should be granted by directly addressing a number of the concerns which the Department and other parties had previously raised in the proceedings. Specifically, Entergy VY contends that the MOU's provisions providing dedicated funding for site restoration and establishing a process for developing site restoration standards will adequately address any concerns which

have been raised regarding the restoration of the VY Station site subsequent to the completion of radiological decommissioning. Entergy VY further contends that its MOU commitment to work with ANR through the NPDES process regarding its thermal discharge, in addition to the evidence previously presented in the case and the reduced period of operation being requested under the Second Amended Petition, are sufficient to ensure that operation of the VY Station will not cause undue water pollution. Entergy VY also maintains that the commitments made in the MOU to economic support for the region around the VY Station strengthen its argument that operation of the station through December 2014 is consistent with the orderly development of the region, and that Entergy VY's willingness to enter into the MOU and the commitments made therein demonstrate that Entergy VY can act as a fair partner for Vermont. Finally, Entergy VY argues that the MOU does not diminish other benefits of its ownership and operation of the VY Station, such as economic benefits and reductions in greenhouse gas emissions, and therefore the MOU should be approved and a CPG granted.

The Department/ANR¹⁰

Prior to the execution of the MOU, the Department and ANR argued that Entergy VY had failed to demonstrate that its ownership and operation of the VY Station was in the general good of the State. However, the Department and ANR now maintain that, subject to the terms of the MOU, the ownership and operation of the VY Station by Entergy VY is in the general good of the State. The Department and ANR argue that the approval of the MOU will provide the State with greater benefits than any plausible alternative, including benefits which the Board could not require on its own motion if it were to reject the MOU, and as such the general good of the State is best served by its approval. In the event the Board determines to reject the MOU, the Department suggests that the Board should adopt the conditions proposed in its October 25, 2013, brief, but recommends that any such conditions be made to conform as closely as possible to those conditions agreed upon in the MOU in order to best promote an orderly wind-down of the VY Station.

10. The Department and ANR filed their final brief jointly and we have accordingly discussed their positions together here.

CLF

CLF supports the Board's approval of the MOU on the grounds that it offers some limited benefits that would not be available absent such approval, such as Entergy VY's agreement to provide additional funds for site restoration and transitional economic development and the fact that Entergy VY has committed to shut down the VY Station by the end of 2014. CLF also notes that many of the provisions of the MOU have limited value due to a lack of specific commitments, the difficulty of enforcement, and the failure to establish a specific timeline for decommissioning and dismantlement. Notwithstanding, CLF argues that approval of the MOU is in the general good of the State.

VNRC/CRWC

VNRC/CRWC maintains that Entergy VY has failed to meet its burden to demonstrate that continued operation of the VY Station will not have an undue adverse effect on the water purity and natural environment of the Connecticut River. Based on this conclusion, VNRC/CRWC argues that the Board should either deny a CPG to Entergy VY or grant an amended CPG with the additional condition that Entergy VY operate the VY Station in closed-cycle mode to prevent excessive thermal discharge. In the event that the Board approves the MOU and grants an amended CPG without additional conditions beyond those envisioned in the MOU, VNRC/CRWC recommends that the Board only do so on the basis that the overall circumstances surrounding the MOU will promote the general good of the State given the limited mitigation contained therein, but not find that Entergy VY has met the criteria of 30 V.S.A. § 248(b)(5) as it relates to water pollution.

VPIRG

VPIRG maintains that Entergy VY has failed to demonstrate its trustworthiness and reliability and that the MOU provides very limited benefits to the State. VPIRG further contends that the site restoration provisions of the MOU are inadequate and unenforceable and that the Board could require more enforceable conditions on its own motion. Similarly, VPIRG contends that many of the other potential benefits of the MOU — such as the additional funding for

transitional economic assistance in Windham County and the requirement for a prompt assessment of the details and cost of site restoration — could in fact be required by the Board even if the MOU were rejected, and that any such requirements could be constructed to better serve the general good of the State than the provisions of the MOU. Given these perceived failings, VPIRG recommends that the Board not approve the MOU and instead issue an order either requiring that Entergy VY seek approval from the NRC to immediately initiate decommissioning at such time as the State requests, or requiring that an auction be held to find a new owner who will decommission the Plant in a timely matter.

WRC

WRC does not take a position on whether or not the Board should approve the MOU or grant an amended CPG to Entergy VY. However, WRC does raise a number of concerns which it contends should be addressed in any final order issued by the Board. WRC advocates that the Board take actions to ensure that decommissioning and site restoration are fully funded, occur on as swift a timeline as possible, and that responsibility for site restoration and decommissioning is held jointly and severally between ENVY, ENO and Entergy Corporation. WRC further advocates that the Board require that all structures, including those more than three feet below grade, be removed as part of site restoration and prohibit rubblization during site restoration.¹¹ WRC also recommends that the Board require that Entergy VY immediately move spent fuel from wet to dry storage or provide additional funds to the decommissioning fund to reflect the expected cost of moving spent fuel, as well as a number of other recommendations to ensure the expeditious and reliable decommissioning of the VY Station site.

NEC

NEC argues that the Board should not approve the MOU or grant an amended CPG on the grounds that Entergy VY has failed to demonstrate that it can act as a fair partner to the State of Vermont. While NEC states that some of the agreements contained in the MOU could provide

11. The MOU defines rubblization as the "demolition of an above-grade decontaminated concrete structure into rubble that is buried on site." MOU at ¶ 5.

a benefit to the State, NEC contends that the Board cannot rely on any of the commitments made in the MOU given Entergy VY's past behavior. Accordingly, NEC urges the Board to reject the MOU and reiterates its arguments that Entergy VY should not be granted a CPG on the basis of its failure to demonstrate that it is a trustworthy partner to the State of Vermont and that it has not shown that Plant operation will not have an adverse impact under a number of the criteria of Section 248. In addition, NEC expresses a number of concerns about the Board's process in considering the MOU, including the speed with which the Board has been asked to reach a decision on the MOU and what NEC contends was a limited opportunity to present further evidence. NEC particularly objects to the MOU Signatories' reservation of their rights to annul the agreement should the Board significantly modify it; in essence, NEC suggests that this provision has limited the ability of NEC and other non-signatory parties to fully participate in the Board's process.

III. LEGAL FRAMEWORK

A. Section 231 Standards

In 2002, the Board issued the Docket 6545 CPG pursuant to 30 V.S.A. § 231, which authorized ENVY to own and ENO to operate the VY Station until March 21, 2012. Under the CPG, ENVY and ENO were authorized to own and operate the VY Station beyond March 21, 2012, solely for purposes of decommissioning.¹²

In the Second Amended Petition, Entergy VY requests that the Board amend its CPG under 30 V.S.A. § 231 to authorize ENVY to own and ENO to operate the VY Station after March 21, 2012, and until December 31, 2014, including all necessary incidents of such operation including without limitation the storage of spent nuclear fuel.¹³ The issuance of a CPG under Section 231 requires that the Board find that it will promote the general good of the State.

The determination of whether an activity will promote the general good of the State requires an assessment and weighing of relevant factors by the Board based on the evidence in

12. Docket 6545, CPG of 6/13/02, as amended by Order of 7/11/02 at 17. Section 231 generally requires anyone who "desires to own or operate a business over which the [Board] has jurisdiction" to petition the Board for a CPG.

13. Second Amended Petition at 5.

the record. The factors considered by the Board in making a general good finding necessarily vary from case to case depending on specific circumstances. Certain considerations related to the owner and operator of a business subject to the Board's jurisdiction are generally reviewed in every CPG proceeding. As the Board previously stated in another proceeding (and reaffirmed in an earlier Order in this proceeding):

For a prospective direct or indirect owner, manager or operator of a business subject to the Board's jurisdiction, we apply certain suitability standards, which involve, as appropriate, assessments of technical and managerial competence, of financial strength and soundness, and of matters related to reputation and conduct (often stated as whether the owner, manager or operator will be a fair partner for Vermont).¹⁴

In this instance, in weighing the evidence, the following considerations appear to be especially relevant to the Board's determination: (i) the nature and short duration of the activity for which authority is sought; (ii) the effect of federal preemption on the Board's authority to consider issues related to radiological safety, including radiological decommissioning (which the Board has always acknowledged), in making a determination as to the general good of the State; (iii) the terms of the MOU; and (iv) available alternatives to the MOU.

In addition, as Entergy VY recognized before its acquisition of the VY Station and continues to acknowledge, it is appropriate for the Board, in light of the nature of the requested approval, to consider the criteria set forth in Section 248(b) in making a "general good" determination under Section 231.¹⁵ Among other things, the time-limited nature of the CPG issued in 2002 with respect to the continued operation of the VY Station means that any extension of the period of authorized operation of the VY Station beyond March 21, 2012, may

14. Docket 7770, *Petition re Acquisition of Central Vermont Public Service Corporation and Merger with Green Mountain Power Corporation*, Order of 6/15/12 at 23; Docket 7862, Order Re: Motion for Partial Summary Judgment (6/19/13) at 6-7. *See, also*, Docket 5900, *Petition of New England Telephone & Telegraph Company for approval of a merger of a subsidiary of Bell Atlantic Corporation into NYNEX Corporation*, Order of 2/26/97 at 7-8; Docket 7599, *Petition of Northern New England Telephone Operations, et al.*, Order of 6/28/10 at 18-20; Docket 7213, *Petition of Green Mountain Power Corporation, Northern New England Energy Corporation, a subsidiary of Gaz Metro of Quebec, and Northstars Merger Subsidiary Corporation for approval of a merger*, Order of 3/26/07 at 9-10; Docket 6150, *Petition of Bell Atlantic Corp. and GTE Corp. for approval of Agreement and Plan of Merger*, Order of 9/13/99 at 48-49.

15. Docket 6545, Entergy VY Brief (5/7/02) at 14; Docket 7862, Entergy VY's Supplemental Brief and Proposed Findings of Fact (2/14/14) at 9.

have effects under the criteria of Section 248(b) relevant to a Section 231 "general good" determination, such as land use and environmental impacts, economic benefits, need and reliability.¹⁶

It is important to note that Entergy VY is not now seeking a CPG under Section 248,¹⁷ and that, therefore, the Board is not required to strictly apply the provisions of Section 248 in making a general good determination. The use of Section 248(b) criteria in the context of this proceeding is only to provide guidance and "a frame of reference" for the Board in evaluating and weighing a broad range of considerations that may be relevant in this case in making the determination of general good under Section 231.¹⁸ It should also be obvious that the weight that the Board would accord to certain Section 248(b) criteria in the context of an extension of the existing CPG until December 31, 2014, could be very different than in the case of a 20-year CPG extension.

B. Preemption

Early in this case, Entergy VY filed two motions relating to the scope of preemption in this Docket, and its implications for developing the evidentiary record. We took both of these motions under advisement.¹⁹ The first motion was filed in June of 2012, when the Company requested a declaratory ruling to define the scope of this proceeding and to place the Board and all parties "on notice at the outset of this proceeding of Entergy VY's positions on federal preemption and federal law."²⁰ The Company argued that the Atomic Energy Act ("AEA")

16. Docket 7862, Order Re: Motion for Partial Summary Judgment (6/19/13) at 8-9.

17. Section 248(e)(2), which was enacted by Act 160, would have required Entergy VY, among other things, to obtain a CPG under Section 248 to permit operation after March 21, 2012. Act 160 has been determined to be preempted by the federal Atomic Energy Act. *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 838 F. Supp. 2d 183, 242 (D. Vt. 2012), *aff'd in part, rev'd in part*, 733 F.3d 393 (2d Cir. 2013).

18. Docket 7862, Order Re: Motion for Partial Summary Judgment (6/19/13) at 8-9.

19. Our action in taking these motions under advisement was consistent with our previous decision in March of 2012 in Docket 7440 to reserve ruling on the scope of preemption as applied to the Company's request for relicensing until "we have a clear statement from Entergy VY specifying precisely what approvals it seeks from this Board and the bases for those approvals, and the specific evidence that the parties seek to introduce." Docket 7440, Order of 3/29/12 at 8.

20. *Motion for Declaratory Ruling Prescribing Scope of Proceeding*, dated June 22, 2012 at 1 (the "Entergy DR Motion").

preempts state regulation of a nuclear power plant with regard to nuclear safety concerns, and that this field preemption applies not only to state regulations that expressly invoke nuclear safety, but also those that focus on non-safety consequences of nuclear safety concerns and those that use a non-safety rationale as a "pretext" for a safety rationale.²¹ Entergy VY maintained that, to avoid AEA field preemption, our ultimate decision in this case must be exclusively based upon "an independent, non-safety rationale" and cannot be based on "a stated rationale that is objectively implausible."²² Thus, according to the Company, the Board has no jurisdiction to consider nuclear safety concerns and thus "may not rely upon any evidence regarding nuclear safety" in ruling on the CPG petition; nor may the Board consider "evidence concerning the economic consequences that inevitably flow from concerns relating to radiological health and safety. . . ."²³

Later, building on the foregoing arguments, the Company filed a second motion in November of 2012, in which it extensively objected on grounds of preemption to the admissibility of much of the prefiled testimony of NEC, CLF and the Department.²⁴ Among other things, Entergy VY objected to evidence regarding: (1) regional power system reliability; (2) land use and aesthetics; (3) Vermont's Comprehensive Entergy Plan; (4) economic concerns; (5) tourism and the "Vermont brand"; (6) the financial soundness and viability of Entergy VY and the VY Station; and (7) whether Entergy is a "fair partner."²⁵

Thereafter, during the technical hearings, Entergy VY consistently objected to lines of questioning on grounds of preemption, asserting broadly that the witnesses' answers could not be admitted into the record because there was no legitimate, non-preempted state regulatory purpose

21. Entergy DR Motion at 2.

22. Entergy DR Motion at 2 and 5.

23. Entergy DR Motion at 4 (citing *Vango Media, Inc. v. City of New York*, 34 F.3d 68, 73 (2d Cir. 1994)).

24. *Objection to Admission of Prefiled Direct Testimony and Exhibits Submitted on Behalf of the Department of Public Service, Conservation Law Foundation, and New England Coalition*, dated November 21, 2012 "(Entergy Objections Motion.)"

25. See generally Entergy Objections Motion.

to be served by offering it for the Board's consideration.²⁶ From Entergy VY's point of view, this evidence, along with the objected-to prefiled testimony, was strictly being offered to serve as a "pretext" for regulating radiological health and safety concerns by providing "implausible" rationales to deny the Company a CPG.

This Board has long recognized that federal law places limitations on the State's jurisdiction to regulate a nuclear generation facility.²⁷ The federal government has exclusive jurisdiction over radiological safety concerns (except for enumerated areas expressly ceded to the states, such as the authority to regulate the air emission of radiation).²⁸ The United States Supreme Court has held that this federal jurisdiction over radiological safety occupies the entire field.²⁹ The NRC "was given exclusive jurisdiction to license the transfer, delivery, receipt, acquisition, possession and use of nuclear materials" and "[u]pon these subjects no role was left for the states."³⁰ Finally, under traditional preemption principles, the Board's jurisdiction over nuclear power plants is limited to the extent that it directly conflicts with federal jurisdiction exercised by the NRC or would frustrate the purposes of the federal regulation.

Nonetheless, we find Entergy VY's characterization of the extent of federal preemption in this proceeding to be overbroad. The regulatory scheme applicable to nuclear generation facilities has been expressly described as one of *dual jurisdiction* — a framework within which the states retain significant authority. The Supreme Court has observed that Congress:

intended that the federal government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant, but that states retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns.³¹

26. See, e.g., tr. 2/11/13 at 77 (reliability); tr. 2/11/13 at 95-96 (land use and aesthetics); 2/14/13 at 90 (Comprehensive Energy Plan); tr. 2/11/13 at 112 (economic concerns); tr. 2/11/13 at 34 (tourism); tr. 2/15/13 at 122 (financial viability); 2/15/13 at 68 (fair partner).

27. See e.g., Docket 6545, Order of 6/13/02 at 121-123.

28. *Pacific Gas and Electric Company v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 212 (1983)(hereinafter "*PG&E*").

29. *Id.*

30. *PG&E* at 207.

31. *PG&E* at 205.

These other areas of state authority encompass traditional state concerns such as land use.³² The *PG&E* decision notes that federal law explicitly preserves state authority to regulate these activities for other purposes:

Nothing in this section shall be construed to affect the authority of any state or local agency to regulate activities for purposes other than protection against radiation hazards.³³

The Supreme Court's ruling in *PG&E* and federal law thus reserves substantial jurisdiction to the State of Vermont over the VY Station — for instance, to impose site restoration standards — so long as the State (through the Board) does not regulate radiological health or safety and otherwise restricts the exercise of its jurisdiction to areas of traditional state concern. In turn, state regulatory authority may be lawfully exercised unless it directly conflicts with federal requirements.

Under Board precedent, the areas of traditional state concern are reflected in the criteria of 30 V.S.A. §§ 231 and 248, which are generally applicable standards that must be satisfied in order for the Board to issue a CPG permitting the ownership, operation and construction of generation facilities in this State.³⁴ The application of the Section 231 and Section 248 criteria is not preempted by federal regulation when these criteria are applied in the same way as they would be in the case of a non-nuclear exempt wholesale generator — a point which Entergy VY has conceded.³⁵ It then reasonably follows that there is no bar of preemption that absolutely forecloses the parties from offering the evidence they deem necessary to support their arguments regarding the criteria applicable to the review of Entergy VY's Second Amended Petition, just as they would with respect to any other petition for a CPG under Section 231 or Section 248.

While they have differed in approach and scope, the theory of the case presented by each party opposing Entergy's CPG petition has been that there is insufficient evidence to support affirmative findings under one or more of the applicable criteria of Section 231 or the Section 248 criteria that we previously determined should inform our judgment as to whether issuance of

32. *PG&E* at 212.

33. *PG&E* at 199 quoting 42 U.S.C. § 2021(k).

34. *See* 30 V.S.A. §§ 231 and 248.

35. Entergy DR Motion at 7.

the CPG requested by Entergy VY will promote the general good of the State. The testimony to which Entergy VY has objected on grounds of preemption is addressed, among other things, to environmental concerns, economic or commercial considerations, issues of plant or system reliability, energy diversity, financial soundness, corporate character (i.e., "fair partner") and other non-radiological safety issues.³⁶ In our experience, these subjects are relevant to the legal criteria at issue in this proceeding and are well-within the Board's traditional state-law regulatory jurisdiction over in-state energy generation facilities and their operators.³⁷ Accordingly, to the extent it is directed at the criteria of Sections 231 and 248, we find the objected-to testimony to be relevant to our review in this Docket of the Company's petition for a CPG.

To the extent the objected-to evidence may be relevant to any non-preempted criteria and state regulatory objectives, the Company has argued throughout this case — but has never actually demonstrated — that this evidence can do no more than provide an "objectively implausible" basis for denying a CPG and therefore simply is designed to supply the Board with a "pretext" for exercising jurisdiction in the forbidden fields of radiological health and safety. However, in our view, the preemption objections which Entergy VY has framed in terms of "implausibility" and "pretext" are actually directed at the weight the Company believes the Board is legally permitted to give to the allegedly preempted evidence; these objections do not go to the admissibility *per se* of the evidence in terms of its facial relevance and materiality to the statutory considerations the Board must weigh in determining whether to grant Entergy VY a CPG.³⁸

Having now had the benefit of reviewing all of the parties' arguments as briefed and the evidence offered in support thereof, we find no basis for sustaining Entergy VY's admissibility

36. *See, e.g., generally*, Entergy Preemption Objections; *supra* n. 26.

37. *See, e.g.*, Docket 7833, Order of 2/11/14 (denying CPG); Docket 7770; Order of 6/15/12 (granting CPG); Docket 7628, Order of 5/31/11 (granting CPG); Docket 7270, Order of 12/21/07 (denying CPG). Significantly, Entergy VY has made no showing that the objected-to evidence departs from the scope and nature of evidence that is commonly offered for the Board's consideration in other CPG proceedings involving non-nuclear generation facilities.

38. Our conclusion on this point is reinforced by the fact that during the technical hearings, it became apparent that some of the Company's preemption objections were cast so broadly as to not allow that some of the objected-to evidence may be admissible to serve non-preempted evidentiary purposes. *See, e.g.*, tr. 2/11/13 at 10-12; 35-36; 41-46. In our view, this is a further reason to exercise our discretion in favor of admitting the objected-to evidence into the record.

objections, whether on grounds of facial preemption or upon the theories of "pretext" and "implausibility." Whatever the motive may have been in eliciting or offering the objected-to evidence for admission into the record, such motives are not germane to the Board's assessment of the admissibility of this evidence. Rather, as Entergy VY itself acknowledges, for purposes of crafting an evidentiary record in this proceeding, the controlling considerations are whether the evidence offered is relevant, material, or "of a type commonly relied upon by reasonably prudent men in the conduct of their affairs."³⁹ In turn, for purposes of Entergy VY's specific preemption concerns, the controlling consideration is what evidence the Board ultimately is persuaded to rely upon in supporting its findings and conclusions of law; the Board may not base its decision on the regulation of radiological safety.

Thus, we do not accept Entergy VY's argument that all of the objected-to evidence must be excluded because the mere admission and consideration of that evidence inevitably ordains the outcome of a final Board order that strays into improperly exercising jurisdiction in a preempted area. In our experience the public good determinations to be made in our proceedings are best made by affording every party a full and fair opportunity — subject to the applicable rules of procedure and evidence — to put on the evidence they believe will best support their theory of the case. We perceive no cause to treat this proceeding any differently.

Accordingly, for the foregoing reasons, we now overrule Entergy VY's preemption-based objections to the prefiled testimony of the Department, CLF, and NEC as set forth in the Entergy DR Motion and the Entergy Objections Motion. Additionally, for the same reasons, we now overrule Entergy's preemption-based objections to the answers elicited through cross-examination during the technical hearings. To the extent that any of this testimony was admitted into the record subject to our taking a preemption objection under advisement, it is now admitted without further preemption-based qualification.⁴⁰

We turn next to Entergy VY's second objection to the admissibility of "fair partner" evidence, which the Company has argued should be excluded from the record because any "fair

39. Entergy Objections Motion at 2 (*discussing* 3 V.S.A. § 810(1) and the Vermont Rules of Evidence).

40. Our ruling on preemption is not intended to alter, displace or disturb any other previous evidentiary ruling we have made to date in this proceeding.

partner" criteria are "impermissibly vague." According to Entergy VY, the "fair partner" criteria lack explicit standards to deter "ad hoc and subjective" decisionmaking by the Board, along with the attendant dangers of arbitrary and discriminatory application.⁴¹ We do not find the Company's argument to be persuasive. Throughout this proceeding, Entergy VY has been represented by capable local counsel who is well-versed in the regulatory case law of Vermont,⁴² as well as in our own prior orders on point, which we note the Company has extensively analyzed and has referred us to during hearings.⁴³ Moreover, the prefiled testimony, hearing transcripts and briefs reflect that there has been a clear understanding of the corporate behavior under scrutiny in this proceeding — the question of the Company's compliance with Vermont statutes, rules and Board orders, its willingness to fulfill its commitments, and the candor and accuracy of its statements to the Board, the State and to other parties in this case. Therefore, we are satisfied that Entergy VY has had fair notice sufficient to "provide people of ordinary intelligence a reasonable opportunity to understand what conduct" is expected of a "fair partner" in Vermont,⁴⁴ and that the failure to behave as a "fair partner" can result in the denial of a CPG.⁴⁵ Our assessment in this regard is borne out by the fact that Entergy VY has had no difficulty proposing affirmative findings to prove it is a fair partner.⁴⁶

In any event, we find that Entergy VY's concern about the alleged vagueness of the "fair partner" criteria largely implicates due process considerations of notice and enforceability — essentially these are not evidentiary issues that are properly addressed by excluding information from the record. Thus, as with the preemption objections, we find the "void for vagueness" objection is actually directed at the weight the Company believes the Board is legally permitted to give to the "fair partner" evidence; this objection does not go to the admissibility *per se* of the

41. See Entergy Objections Motion at 5 (citing *Cunney v. Bd. of Trustees of Vill. Of Grand View, N.Y.*, 660 F.3d 612, 621 (2d Cir.2011)(citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000)); Entergy DR Motion at 14-15 (same).

42. See *In re Petition of Quechee Service Co., Inc.*, 166 Vt. 50, 62-63, 690 A2d. 354, 365 (1996)(approving Public Service Board's reliance on past conduct in judging CPG applicant's present fitness to operate regulated utility).

43. See Entergy VY Initial Brief dated 8/19/13 at 78-121; Entergy VY Reply dated 10/25/13 at 63-64.

44. See *Cunney*, 660 F.3d at 621 (citation omitted).

45. See *Re Quechee Services Co. Inc.*, Docket 5699, Order of 12/30/94, *aff'd* 166 Vt. 50 (1996).

46. See Entergy VY Proposal for Decision dated 8/19/13 at 27-28; Entergy VY Supplemental Proposed Findings dated 2/14/14 at 10-12.

evidence. Accordingly, we now overrule the "void for vagueness" objection to "fair partner" evidence as raised in the Entergy DR Motion and the Entergy Objections Motion. To the extent that any such prefiled testimony or any such testimony elicited during the technical hearings was admitted into the record subject to our taking the Company's "void for vagueness" objection under advisement, it is now admitted without further qualification on these "void for vagueness" grounds.⁴⁷

C. NEC Procedural Objection

NEC takes exception to the fact that an MOU has been filed in the late stages of this proceeding which, if accepted by the Board, would result in a final order terminating the litigation on terms that were negotiated without input from NEC and other intervenors.⁴⁸ From NEC's point of view, the effect of these events has been that "the Board's authority to hear and independently rule on citizen concerns" has been "snatched out of the adjudicatory space and handed off to a minority of the parties for resolution in private talks well beyond the legal reach of the Board and the intervenors"⁴⁹ NEC thus takes the position that the Board "must either reject the MOU outright or affirm the hearing rights of the intervenors" by addressing their concerns in an order containing conditions beyond what is provided for in the MOU.⁵⁰ We think that NEC misconstrues the effect of the MOU and the Board's decision and therefore we reject NEC's argument.

First, it is unclear what NEC means when it refers to "affirming" hearing rights. Every party in this proceeding – including NEC – has received ample opportunity to conduct discovery, file testimony, conduct cross-examination and submit briefs arguing for their positions, both on the merits of the case as litigated in the winter and summer of 2013, and on the MOU that was filed by the Department, ANR and Entergy VY on December 23, 2013, as a proposed outcome for this case after five years of litigation. If NEC "failed to apprehend" until the end of the final

47. Our ruling on this issue is not intended to alter, displace or disturb any other previous evidentiary ruling we have made to date in this proceeding.

48. New England Coalition's Briefs on the MOU dated 2/21/14 at 1-3 and 5-6 ("NEC MOU Brief").

49. NEC MOU Brief at 6.

50. NEC MOU Brief at 17.

day of the MOU technical hearings on January 31, 2014, that the merits of the MOU were under review for possible acceptance as the resolution of the litigation, then the cause of NEC's misapprehension does not lie with the Board's process: the MOU technical hearings were noticed for this very purpose; an opportunity was provided at a lengthy status conference four weeks before the MOU technical hearings for all parties to discuss the proposed scope of the MOU technical hearings; all parties were entitled to conduct discovery and to file supplemental testimony on the MOU; all parties were afforded an opportunity to conduct cross-examination during the two days of MOU technical hearings; all parties were entitled to brief their issues thereafter which could encompass not only the MOU, but also the parties' positions on the case as a whole, and non-signatories to the MOU were given an additional week to do so.⁵¹ In any event, NEC has acknowledged that, "[a]s a practical matter, there is no guarantee that through the hearing process" the Board would have given the intervenors any more relief than the terms of the settlement that have been negotiated by the MOU Signatories.⁵² What NEC fails to appreciate is that all parties had the right to present their case in testimony, cross-examine witnesses, and submit briefs on the full record of the case, not just the MOU. Therefore, we find no basis to conclude that NEC's "hearing rights" have in any way been compromised by the decision of this Board to accept a settlement in place of issuing a final judgment order.

Second, as we have repeatedly emphasized in this proceeding, the ultimate purpose is to determine whether or not the general good of the State will be promoted by granting Entergy VY an amended CPG to continue owning and operating the VY Station. The MOU embodies a settled consensus among the petitioner and the two state agencies with supervisory jurisdiction over the Company and the VY Station that the general good of the state indeed would be promoted through the realization of the benefits secured by the MOU, in exchange for the concessions made to reach that agreement. It is a proposed outcome for this Docket that has been

51. See *Notice of Hearing* dated 12/23/13 ("the purpose of the status conference will be to discuss the parties' recommendations as to how to proceed in this docket in light of the filing of the Memorandum of Understanding"); *Order re: Schedule for Further Proceedings* dated 1/2/14 at 2 (establishing deadline for parties who did not sign MOU to file testimony or prehearing memoranda); see generally Docket 7862 tr. 1/2/14 (transcript from status conference).

52. NEC MOU Brief at 6.

brought before us for our consideration, following an opportunity for hearing and briefing from all parties – including NEC.⁵³ In accepting this MOU on its terms, we are exercising our independent judgment that it is in the public interest to do so, based on the findings we have made and conclusions of law we have reached in this decision. There is nothing unusual about our proceeding in this fashion. We therefore reject NEC's suggestion that our willingness to accept a settled outcome in a contested case proceeding signals any preferential treatment of any kind for the signatories of the MOU. NEC's position is puzzling at best, given that our process is entirely consistent with the Administrative Procedures Act, which governs how the Board conducts its proceedings and which expressly authorizes the Board to accept stipulations and settlements in order to informally dispose of contested cases.⁵⁴

IV. FINDINGS AND DISCUSSION

A. Findings Concerning Proposal and Entergy VY

1. ENVY and ENO are indirect subsidiaries of Entergy Corporation. There are three intermediary affiliates above ENVY. They are Entergy Nuclear Vermont Investment Company, Entergy Nuclear Holding Company #3, and Entergy Nuclear Holding Company. Exh. CLF-JC-7 at 5; Docket 7404, Order of 6/24/10 at 9.

2. The VY Station is a 628 (winter)/604 (summer) megawatt electric capacity boiling water reactor located on approximately 148 acres of land along the Connecticut River in the Town of

53. NEC's complaint that the MOU has somehow "supplanted" rather than "supplemented" the record basis for our decision on the merits is misplaced. NEC MOU Brief at 6. With the evident exception of NEC, all parties understood that, in light of the MOU filed in December of 2013, the focus of the Docket shifted to the following question: "is the MOU better than the alternative of going forward with the underlying case or not." Tr. 1/31/14 at 52 (Volz). At the end of the MOU technical hearings, it was pointed out to NEC that arguments in favor of attaching additional conditions to the MOU effectively were arguments in favor of not approving the MOU. Tr. 1/31/14 at 52 (Volz). At no time was NEC "instructed" to desist from proposing conditions or to abandon arguments based on evidence developed in the case before the MOU was filed. In any case, NEC cannot complain of any prejudice, given that we have fully considered all of NEC's filings in this case, including most recently the NEC MOU Brief, and have noted that the NEC MOU Brief incorporates by reference all of NEC's previous arguments and proposed findings, as well as many of those of other parties who originally opposed the Company's petition for a CPG. See NEC MOU Brief at 18.

54. 3 V.S.A. § 809(d)("Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.")

Vernon, Vermont. T. Michael Twomey, Entergy VY ("Twomey") pf. at 2; Harry L. Dodson, Entergy VY ("Dodson") pf. at 8; exh. EN-TMT-2 at 2.

3. The VY Station was originally constructed by VYNPC and was owned by VYNPC until 2002. Two Vermont electric distribution utilities, Central Vermont Public Service Corporation and Green Mountain Power Corporation, collectively held a majority ownership interest in VYNPC. Docket 6545, Order of 6/13/02 at 13.

4. The VY Station supplied about one-third of the electricity used in the state until the purchase power contracts with Vermont utilities expired in 2012. Exh. PSD-ASH-1 at 65-66.

5. On June 13, 2002, the Board approved, subject to certain conditions and exceptions, the sale of VY Station by VYNPC to Entergy VY, other related transactions, and a memorandum of understanding between the Docket 6545 petitioners and the Department. Entergy VY committed to pay a total of \$180 million to VYNPC under the sale agreement with VYNPC. Docket 6545, Order of 6/13/02 at 23, 162-167.

6. On June 13, 2002, the Board issued an Order approving the sale and a CPG pursuant to 30 V.S.A. § 231(a) to ENVY to own and ENO to operate the VY Station until March 21, 2012. Under both the sale Order and CPG, ownership and operation of the VY Station beyond March 21, 2012, for other than decommissioning purposes, was prohibited absent issuance of a new or renewed CPG by the Board. Docket 6545, CPG (6/13/02); Docket 6545, Order of 7/11/02 at 17; Docket 6545, Order of 6/13/02 at 164 & 165; Docket 6545 MOU at ¶ 12; Docket 7440, Order of 3/19/12 at 2-5 & 15-19; Dockets 6545, 7082 and 7440, Order of 11/29/12.

7. The Board approved a power uprate project at the VY Station in 2004, which resulted in an increase in power generating capacity of 20 percent. Exh. PSD Cross-WC-15 at 3; Docket 6812, Order of 3/15/04.

8. The Board approved the construction of a dry fuel storage facility at the VY Station in 2006. Docket 7082, Order of 4/26/06.

9. The VY Station's federal operating license was scheduled to expire on March 21, 2012, after forty years of operation. In March 2011, the NRC granted the VY Station a license to operate for an additional 20 years, through March 2032. Twomey pf. at 4-5; exh. EN-TMT-2; exh. PSD-Cross-WC-15 at 3.

10. On March 3, 2008, Entergy VY filed a petition with the Board seeking authority to continue operation of the VY Station for an additional 20 years through March 21, 2032. Docket 7440, Petition of 3/3/08 at 2.⁵⁵

11. On January 19, 2012, the United States District Court for the District of Vermont issued a decision holding that provisions of Act 160, codified at 30 V.S.A. § 248(e)(2), were preempted by the federal Atomic Energy Act, and enjoined the enforcement of these provisions. *Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 838 F. Supp. 2d 183, 243 (D. Vt. 2012),

12. On March 29, 2012, the Board ordered that Entergy VY file the First Amended Petition and that a new docket be opened to consider the amended petition. Docket 7440, Order of 3/29/12 at 9.

13. On April 16, 2012, Entergy VY filed the First Amended Petition seeking Board approval to continue operations at the VY Station for 20 years beyond the current March 21, 2012, expiration date until March 21, 2032. The Board then opened this Docket to consider the First Amended Petition. First Amended Petition.

14. On August 14, 2013, the United States Court of Appeals for the Second Circuit issued a decision, part of which affirmed the decision of the District Court that provisions of Act 160 were preempted by the federal Atomic Energy Act. *Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393 (2d Cir. 2013).

15. On August 27, 2013, Entergy VY announced that it would be closing the VY Station and filed the Second Amended Petition in this docket seeking Board approval to continue operations at the VY Station only until December 31, 2014. Second Amended Petition.

16. On December 23, 2013, Entergy VY, the Department and ANR entered into, and filed with the Board, the MOU regarding issues associated with the VY Station, Entergy VY's plans to close the VY Station, Entergy VY's continued operation of the VY Station through December 31, 2014, and the restoration of the VY Station site. Exh. Joint-1.

17. Under the MOU, Entergy VY agrees to cease all power generating operations at the VY Station, other than necessary emergency back-up generators, by December 31, 2014. Exh. Joint-1 at ¶ 2.

55. See procedural history, above, for more information about Board proceedings in Docket 7440.

18. The MOU includes a limited option to extend operations through February 28, 2015, in response to "unexpected operational events" with the agreement of the Department and subject to the approval of this Board and the NRC. Exh. Joint-1 at ¶ 2.

19. Under the MOU, Entergy VY agrees to "operate the VY Station in accordance with its existing National Pollutant Discharge Elimination System ('NPDES') permit" and "to continue to pursue issues related to Entergy VY's thermal discharge through ANR's NPDES permitting process." Exh. Joint-1 at ¶ 4.

20. Pursuant to the MOU, Entergy VY will complete a site assessment study of the costs and tasks of site restoration, including a full assessment of all non-radiological conditions, and to deliver that study to the Department, ANR, and the Vermont Department of Health ("VDH") by December 31, 2014. Exh. Joint-1 at ¶ 5.

21. Under the MOU, ENVY commits to work with the Department, ANR, and VDH "in good faith to determine in a timely and cost-effective manner overall site restoration standards necessary to support use of the property without limitation (excepting any independent spent fuel storage installation ('ISFSI') and any perimeter related to it)"; such standards will prohibit ENVY from employing rubbleization (i.e., demolition of decontaminated structures into rubble that is buried at the site) and require ENVY to address "removal of structures and radiological exposure levels." Exh. Joint-1 at ¶ 5.

22. Under the MOU, ENVY commits to "commence site restoration in accordance with the overall site restoration standards . . . promptly after completing radiological decommissioning." Exh. Joint-1 at ¶ 6.

23. Under the MOU, ENVY agrees to establish a trust fund dedicated to site restoration, to pay \$25 million into the trust fund by December 31, 2017, and to "provide financial assurance, in the form of a parent guarantee from Entergy Corporation in the amount of \$20 million for the Site Restoration Fund." Exh. Joint-1 at ¶ 7.

24. Under the MOU, ENVY (or any affiliate that may come to own the VY Station property) agrees to grant the State a right of first refusal before selling the VY Station property or any subpart thereof. Exh. Joint-1 at ¶ 8.

25. Pursuant to the MOU, within 30 days of a Board Order approving the MOU, ENVY will pay to Vermont's Clean Energy Development Fund ("CEDF") all money held in escrow arising from ENVY's quarterly payments related to the CEDF since March 21, 2012. Exh. Joint-1 at ¶ 9.

26. ENVY will pay approximately \$5.2 million to the CEDF under the terms of the MOU. Exh. Joint-1 at ¶ 9.

27. Pursuant to the MOU, ENVY will "make a payment to the State of Vermont on or before April 1 of each [of the next five] year[s] in the amount of \$2 million each year to promote economic development in Windham County, Vermont." Exh. Joint-1 at ¶ 11.

28. Under the MOU, Entergy VY is prohibited from challenging enforcement of any of "the obligations specifically and expressly undertaken" in the MOU as preempted by federal law. Exh. Joint-1 at ¶ 12; *see* tr. 1/30/14 at 77 (Recchia); tr. 1/31/14 at 139-140 (Twomey).

29. Under the MOU, Entergy VY agrees to withdraw its appeal to the Supreme Court of Vermont from this Board's decisions in Docket 7440 and, jointly with the Department, to recommend that this Board close Docket 7600. Exh. Joint-1 at ¶ 20.

30. The MOU provides that except as expressly stated in the MOU, all other agreements, Board orders and MOUs remain in full force and effect. Exh. Joint-1 at ¶ 17.

B. Fair Partner

Findings

Services to Vermont

31. For the term of the Purchase Power Agreement entered into following Entergy VY's acquisition of the VY Station in 2002, Entergy VY provided power to some Vermont utilities. Entergy VY provided stable rates for customers in Vermont, relieved the utilities of the risks associated with operating the VY Station, invested more than \$400 million in the facility to maintain it as a reliable source of power for the New England region, and paid wages to the VY Station employees and taxes to local and state governments. Tr. 1/31/14 at 147 (Twomey).

32. As part of the Docket 6545 MOU, Entergy VY entered into an Access Memorandum of Understanding ("Access MOU") intended to provide the state Nuclear Engineer with access to

information necessary to monitor the VY Station's operation and management. Entergy VY has provided access in accordance with the Access MOU. Tr. 2/26/13, Vol. II, at 82-83 (Vanags).

33. Entergy VY has worked cooperatively with the State Nuclear Engineer. Tr. 2/26/13, Vol. II, at 110-111 (Vanags); tr. 6/19/13, Vol. II, at 116-117 (Vanags).

34. The VY Station has implemented a comprehensive tracking program to verify that Entergy VY is meeting its commitments to state regulators. *See* exh. EN Redirect-Buteau-2.

35. Entergy VY employees are active in their communities and regularly volunteer their time and labor to support local projects. Twomey pf. at 12.

36. Entergy VY provides approximately \$300,000 to \$400,000 annually to support local charities. Twomey pf. at 12.

Recent Performance

37. The VY Station will close at the end of the current fuel cycle whether or not the Board grants a CPG approving the MOU. Tr. 1/31/14 at 131-133, 162-163 (Twomey).

38. The much shorter operating period requested by Entergy VY's Second Amended Petition, in comparison with the 20-year CPG Entergy VY previously requested, reflects materially changed circumstances, and aligns many of the interests of Entergy VY and the State of Vermont. Tr. 1/30/14 at 113, 150-151 (Recchia).

39. The shorter operating period also will increase the likelihood that Entergy VY and the State will not arrive at different interpretations of Entergy VY's commitments to the State, including its commitments under the MOU. Christopher Recchia, DPS ("Recchia") pf. at 3; tr. 1/30/14 at 37, 106, 150-151 (Recchia).

40. The MOU establishes a clear schedule and specifies amounts for each payment that ENVY is required to make. Exh. Joint-1 at ¶¶ 7, 9, 11.

41. The existence of the MOU indicates that the parties to it have been able to restore a working relationship. According to the Department, high-level Entergy VY representatives have shown a positive evolution in their commitment to the State of Vermont. Recchia pf. at 3; Twomey supp. pf. at 19.

42. The MOU establishes a framework for developing site restoration standards. Exh. Joint-1 at ¶ 5.

43. The clarity with which the MOU specifies the payment schedule and the framework for setting standards in regard to site restoration will reduce any opportunity for Entergy VY to reinterpret its commitments to the State. Recchia pf. at 3; tr. 1/30/14 at 36-37, 106, 109-111, 150-151 (Recchia).

44. Entergy VY explicitly has waived its right to challenge as preempted by federal law an action to enforce the obligations it has assumed in the MOU. Tr. 1/31/14 at 139-140 (Twomey).

45. Entergy VY's commitment to (1) establish a Site Restoration Fund, (2) to make five annual payments to the State to foster economic development in Windham County, and (3) to work in good faith with the Department, ANR, and VDH to establish standards for site restoration support the conclusion that Entergy VY will operate as a fair partner to the State of Vermont. Recchia pf. at 3-4; tr. 1/30/14 at 113, 148-149 (Recchia).

Regulatory Compliance

46. At the time of the sale of the VY Station, various Entergy VY officials, including Michael Kansler, Senior Vice President and Chief Operating Officer of ENO and ENVY, testified that Entergy VY would agree that the Board's Order approving the sale and the CPG issued by the Board should be limited to a term of years ending with the VY Station's then-current license termination date (March 21, 2012) and that operation of the VY Station beyond its license termination date would be allowed only if the CPG has been renewed by the Board. Exhs. PSD-2 at 1, 26; PSD-3 at 3; PSD-5 at 8; PSD-6 at 7; PSD-7 at 31.

47. During Docket 6545, Entergy VY voluntarily executed a Memorandum of Understanding with the Department (as well as with Vermont Yankee Nuclear Power Corporation, Central Vermont Public Service Corporation, and Green Mountain Power Corporation) in order to secure the Department's support for Entergy VY's petition for a Certificate of Consent, an Order approving its purchase of the VY Station, and the CPG. Paragraph 12 of the Docket 6545 MOU provides as follows:

Board Approval of Operating License Renewal: The signatories to this MOU agree that any order issued by the Board granting approval of the sale of VYNPS to ENVY and any Certificate of Public Good ("CPG") issued by the Board to ENVY and ENO will authorize operation of the VYNPS only until March 21, 2012, and thereafter will authorize ENVY and ENO only to decommission the VYNPS. Any such Board order approving the sale shall be so conditioned, and any Board order issuing a CPG to ENVY and ENO shall provide that operation of VYNPS beyond March 21, 2012, shall be allowed only if application for renewal of authority under the CPG to operate the VYNPS is made and granted. Each of VYNPC, CVPS, GMP, ENVY and ENO expressly and irrevocably agrees: (a) that the Board has jurisdiction under current law to grant or deny approval of operation of the VYNPS beyond March 21, 2012; and (b) to waive any claim each may have that federal law preempts the jurisdiction of the Board to take the actions and impose the conditions agreed upon in this paragraph to renew, amend or extend the ENVY CPG and ENO CPG to allow operation of the VYNPS after March 21, 2012, or to decline to so renew, amend or extend.

Exh. PSD-1.

48. The Board's June 13, 2002, Order approving the sale contained a Condition 8, which stated that "[a]bsent issuance of a new Certificate of Public Good or renewal of the Certificate of Public Good . . . Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. are prohibited from operating the Vermont Yankee Nuclear Power Station after March 21, 2012." The CPG issued at the same time specified that ownership and operation of the VY Station was not permitted after March 21, 2012. This latter provision was subsequently modified to allow ownership after that date, but only for the purpose of decommissioning. Docket 6545, Order of 6/13/02 at 164; Order of 7/11/02 at 17; Order of 7/15/02; CPG dated 6/13/02.

49. On March 19, 2012, the Board ruled, in response to Entergy VY's request for a declaratory ruling on this issue, that the limitation in the Docket 6545 Order approving the sale of the VY Station was a condition of the sale and not part of the on-going CPG renewal that Entergy VY had requested and that therefore the deadline was not extended by virtue of 3 V.S.A. § 814(b). Docket 7440, Order of 3/19/12 at 16-19.

50. Entergy VY has continued to operate the VY Station since March 21, 2012, notwithstanding Condition 8 of the Docket 6545 Order, its agreement in the Docket 6545 MOU, the absence of a new CPG, and the Board's rulings in Docket 7440 concerning the operation of Condition 8. Tr. 6/28/13 (Vol. II) at 19-20 (Hopkins); findings 47 through 49, above.

51. In an Order dated November 29, 2012, in Dockets 6545, 7082, and 7440, the Board found that Entergy VY has "voluntarily elected to continue operating Vermont Yankee even after the Board affirmatively stated that Condition 8 of the Sale Order and the applicable conditions in the DFS (dry fuel storage) Order and CPG were not extended by 3 V.S.A. § 814(b)." Order at 28.

52. In Docket 6545, an Entergy VY witness also represented that "ENVY and ENO expressly and irrevocably agree to waive any claim they or their affiliates may have that the jurisdiction of the Board to issue the CPG is preempted by federal law." Exh. PSD-06 at 8.

53. In the Docket 6545 MOU, Entergy VY "expressly and irrevocably" agreed to waive any preemption claim challenging "the jurisdiction of the Board" to grant or deny a CPG for operation beyond March 21, 2012. Exh. PSD-1 at ¶ 12.

54. In the Order approving Entergy's petition in Docket 6545, the Board found that Entergy VY had agreed "that the Board has complete jurisdiction to decide whether to renew ENVY and ENO's certificates of public good if they seek to run Vermont Yankee past the expiration of its present term." Docket 6545, Order of 6/13/02 at 133-134.

55. In Docket No. 7082, Entergy VY entered into an MOU which provided that Entergy VY would not raise preemption to prevent enforcement of its express obligations under the MOU. Exh. PSD-09 at 3.

56. On November 5, 2003, Entergy VY "requested permission from the Board to construct two buildings on concrete slab foundations." Docket 6812, Order of 2/18/05 at 5.

57. Five days later, Entergy VY "commenced the site preparation and installation of the two temporary structures" despite not having received the Board's permission or approval. Entergy VY did not notify the Board or the Department that site preparation had commenced until November 26, 2003. *Id.* at 5-7.

58. The Board imposed an \$85,000 penalty on Entergy VY for violation of Section 248's prohibition against site preparation or construction absent prior Board approval. *Id.* at 19.

59. On June 21, 2005, Entergy VY and the Department entered into a Memorandum of Understanding pertaining to Docket 7082, in which Entergy agreed that "[m]onthly the

Company will manually conduct radiation surveillance of each [cask located on the Dry Fuel Storage pad]." Exh. PSD-09 at ¶ 5.

60. On July 31, 2009, Entergy VY informed the Board that Entergy had "not initiated monthly radiation surveillances of the . . . casks following the initial radiation surveillance conducted at the time each of the five casks were loaded." Exh. PSD-Cross-96 at 1.

61. On June 13, 2003, the Board issued an Order granting NEC's motion to compel in Docket 6812. The Board found that Entergy VY's "disingenuous . . . reading" and "selective quotation [of Rule 78] suggest[ed] a willingness to be less than forthright with this Board." Docket 6812, *Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., for a certificate of public good to modify certain generation facilities at the Vermont Yankee Nuclear Power Station in order to increase the Station's generation output*, Order of 6/13/03 at 5.

62. Less than four months later, the Board issued another Order in Docket 6812 imposing a \$50,911 sanction on Entergy VY for its failure to provide timely and complete discovery. The Board found that Entergy VY's "corrosive and bullying attitude . . . threaten[ed] an otherwise fair and open process" and that Entergy VY had made "frivolous" arguments to resist valid discovery requests. Docket 6812, Order of 10/7/03 at 8 and 12.

Accuracy of Representations

63. Beginning in the summer of 2008 and through much of 2009, Entergy VY personnel advised those who were conducting the Comprehensive Reliability Assessment that the VY Station had no underground piping systems carrying radionuclides. Entergy VY also made similar representations in response to discovery requests in Docket 7440. Exh. Board-5 at 1; exh. CLF-JC-4 at 50-60.

64. Relying on those representations, the Comprehensive Reliability Assessment concluded that "there are no underground piping systems carrying radionuclides" at the VY Station. Exh. Board-4 at 5.

65. On February 11, 2009, Entergy VY submitted a Response and Errata to the Comprehensive Reliability Assessment that did not correct that misstatement. Exh. CLF-JC-4 at 44.

66. Relying on the Comprehensive Reliability Assessment, the Public Oversight Panel reported on March 17, 2009, that "there were no systems with underground piping that carry radioactivity at VY." Entergy VY never addressed this statement. Exh. CLF-JC-4 at 68.

67. Senior Entergy VY officials, testifying in Docket 7440 in May, 2009, represented that they did not believe there was active piping in service at that time carrying radionuclides underground. Exhibit CLF-JC-4, at 73, 80; exh. Board-5 at 4-5.

68. According to a report by the Office of the Attorney General of Vermont, Entergy VY personnel had cause to know as early as May, 2009, that the representations concerning the underground piping were not accurate. Exh. CLF-JC-4 at 62, 64, 76, 84, 92-94; exh. Board-5 at 6 and Attachment 3, 4.

69. Entergy VY did not inform the Board that there in fact were underground pipes carrying radionuclides at the VY Station until January 13, 2010, after Entergy VY received a test result indicating the presence of tritium in a groundwater monitoring well. Exh. Board-5 at 1-2.

70. In a June 4, 2010, Order in Docket 7440, this Board sanctioned Entergy VY for its "misrepresentations" in discovery and in the evidentiary record, and ordered that it reimburse VPIRG, NEC, and WRC for costs incurred as a result of those misrepresentations. Docket 7440, Order of 6/4/10 at 10.

71. Following an investigation, the Office of the Attorney General determined that Entergy VY "and various of its personnel repeatedly misled State officials with direct misstatements and repeatedly failed to clarify misperceptions as to the existence of underground piping carrying radionuclides" at the VY Station. Exh. Board-5 at 8.

Discussion

As we explained in our June 19, 2013, Order in this Docket and discuss above in Section III.A., the Board has traditionally looked at a range of factors in ruling on a petition under Section 231 and determining whether the ownership or operation by a company promotes the

general good of the State. One of these criterion is whether the company will act as a fair partner with the State.⁵⁶ This inquiry encompasses past business activity, regulatory performance, business reputation, and fairness towards customers. Companies authorized to conduct business within the State are expected to comply with regulatory requirements, meet any commitments they make to the Board, the Department and other entities, and present accurate information.⁵⁷

At the outset, we must put the fair partner consideration in context. As a matter of statute, the only decision the Board must make is a determination of whether the issuance of a CPG will promote the general good of the State. The various criteria that we have traditionally examined, and that we review in this Order, are considerations that the Board weighs in reaching the ultimate statutory determination. Unlike a proceeding under Section 248, in which the statute requires that an applicant demonstrate that it meets each of the Section 248(b) criteria, under Section 231, the only dispositive standard is the general good of the State. That is not to say that the Board-developed criteria are irrelevant. They are intended to capture the considerations that help to inform a determination of whether granting permission to a company to conduct business in Vermont promotes the general good. This includes the past and expected behavior of the applicant. Nonetheless, the fair partner standard must always be viewed in the broader context and the specific relief sought.

In this proceeding, the question of ENVY's and ENO's past activities — and how those past actions should inform our decision in this proceeding — has been highly contentious. For its part, Entergy VY acknowledges that there have been some instances where its actions have been inadequate. However, Entergy VY has consistently maintained that an evaluation of its full performance over the past twelve years shows that the shortfalls are not the norm. Entergy VY further asserts that denial of a CPG would be an unduly harsh punishment for the past actions, particularly in light of the Board's actions with regard to other companies that have fallen short on regulatory compliance and accuracy of representations. Entergy VY also highlights its recent successful negotiations with the Department on the MOU as evidence that it can successfully work with Vermont and regulators to produce a favorable result.

56. Order of 6/19/13 at 7-8.

57. *Investigation into Citizens Utilities*, Dockets 5841/5859, Order of 6/16/97.

The Department originally raised significant concerns about Entergy VY's performance and, prior to Entergy VY's decision only to seek a CPG through the end of 2014, opposed issuance of a CPG. However, the Department has recently successfully negotiated the MOU with Entergy VY. The Department thus contends that the significance of those concerns and the appropriate weight the Board should attribute to them has changed in light of the shortened operational time frame Entergy VY now seeks and the substantive provisions of the MOU. The Department asserts that the brief remaining operational period means that fewer opportunities will exist for misunderstanding or reinterpretation of the commitments made to the State. Moreover, argues the Department, many of the responsibilities under the MOU occur in the near term so that Entergy VY's compliance track record can easily be assessed and undischarged obligations enforced. The Department also emphasizes the clarity and specificity of the MOU as being likely to address many concerns about potential reinterpretations. Finally, the Department characterizes Entergy VY's commitments under the MOU as indicating a willingness to work constructively with the State.

CLF originally took the position that Entergy VY's petition should be denied, because its actions in providing false information, failing to take adequate steps to correct and address known problems, and failing to honor its commitments demonstrated a clear lack of trustworthiness. Following negotiation of the MOU, CLF continues to maintain that Entergy VY has been an untrustworthy partner and argues that the Board cannot determine that the MOU provides sufficiently tangible enforceable commitments with meaningful benefits to Vermont. Nonetheless, CLF argues that the Board should approve the MOU, largely because the relief it had previously sought — denial of the CPG — will effectively occur at the end of 2014.

NEC asserts that, based upon its track record, Entergy VY should not be considered a fair partner. NEC maintains that the additional promises in the MOU cannot make up for previous broken promises. NEC further contends that there is no basis to conclude that Entergy VY has now become more trustworthy as all that has changed is Entergy VY's willingness to pay money.

VPIRG argues that Entergy VY's history of noncompliance, inaccurate statements, and unwillingness to meet obligations means that Entergy VY is not a fair partner for Vermont. The MOU, asserts VPIRG, does not address this past action. Instead, VPIRG asks the Board to adopt

one of two "enforceable, non-preempted alternatives" to relying upon Entergy VY as a good faith partner. One of these conditions would be a requirement that Entergy VY seek NRC approval of immediate decommissioning of the VY Station if and when the State requests. Alternatively, VPIRG suggests that the Board should solicit bids from other companies which may desire to own the VY Station and use the Decommissioning Trust Fund.

Entergy VY's regulatory performance as a fair partner presents a mixed history. For a dozen years, Entergy VY provided favorably priced power to Vermont utilities under purchase power agreements. Due to improvements after Entergy VY acquired the Plant, the VY Station materially improved its capacity factor, with the Vermont utilities receiving the benefit of the additional power output. Entergy VY has also lived up to its commitments under the Access MOU to provide the State Nuclear Engineer with information and access to the VY Station (although apparently this information flow became less as Entergy VY elected to pursue litigation). Entergy VY has also offered benefits to the local community, such as charitable contributions.

This performance history, however, has a different side when the Company's conduct apart from power sales is examined. The Board shares many of the concerns raised during this proceeding over Entergy VY's past actions and what they mean for future activity. These actions include the following:

- Entergy VY has failed to meet its commitment in the Docket 6545 MOU to cease operating on March 21, 2012, unless it had received Board approval. Entergy VY also failed to comply with the Board Order approving the sale of the VY Station to Entergy VY that included the same condition;⁵⁸
- Entergy VY also did not meet commitments in the Docket 7082 MOU;
- Entergy VY violated state law prohibiting site preparation or construction prior to issuance of a CPG by the Board;

58. Entergy VY has attempted to justify its actions by arguing that it has the right to continue operating under 3 V.S.A. § 814, and that the Vermont Attorney General had agreed with that view. The Board previously rejected Entergy VY's argument concerning Section 814 in orders issued March 19, 2012, in Docket 7440 and November 29, 2012, in Dockets 6545, 7082, and 7440. As to the Attorney General's position on Section 814(b), the Board has previously informed parties that throughout the federal litigation surrounding Entergy VY, the Attorney General did not consult with the Board on any matters. As a result, the Attorney General's position was not informed by the Board's perspective.

- Entergy VY's behavior in discovery and other actions has led to the Board imposing sanctions;
- Entergy VY failed to provide accurate information and correct that information once it had a good faith basis to believe it was incorrect or misleading.

This history is troubling and falls well below the level of conduct the Board expects of utilities authorized to conduct business in the State. Companies subject to the Board's jurisdiction are expected to comply with applicable law and regulatory commitments, particularly those commitments offered to other parties and the Board with the expectation that they would be relied upon in order to receive a benefit. As a witness for the Department expressed it: "Accurate information provided promptly is the lifeblood of any regulatory system."⁵⁹ Entergy VY did not meet these norms. Significantly, executives in the highest echelons of Entergy Corporation and Entergy VY itself understood that its performance was substandard.⁶⁰

If Entergy VY were continuing to pursue a twenty-year license extension, the experience over the last twelve years might well have led the Board to deny a CPG. However, Entergy VY now seeks permission to operate the VY Station from March 21, 2012, through the end of this calendar year. We are persuaded that Entergy VY can realistically be expected to be a fair partner for the short remaining operating period. Therefore, it is reasonable to conclude that approval of the MOU and issuance of a CPG to Entergy VY for that remaining operating period is in the best interests of the State of Vermont.

The MOU and the short period of remaining operation present a number of features that, overall, persuade us that Entergy VY is likely to meet its obligations to the State of Vermont, including this Board, and can reasonably be relied upon to do so. We start with the MOU itself. This proceeding, and the last five years of litigation (since it was first revealed that Entergy VY

59. Prefiled Surrebuttal Testimony of Peter Bradford at 2.

60. In an e-mail to Entergy Corporation Chief Executive Officer Wayne Leonard, Entergy Corporation Vice President Curt Hebert (who is a former Chairman of the Federal Energy Regulatory Commission) elaborated on what he described as a "broken culture":

We did not get to this point because of poor communications strategy and lack of an advertising corporate giant. We are where we are because people were sloppy, arrogant and unwilling to recognize that what people outside of the nuclear facility think, matters more than they can ever imagine. . . . We continue to want to say no in the nuclear organization.

Exh. Board-19.

had not disclosed the existence of underground pipes containing radionuclides), have been highly adversarial and contentious — more so than other proceedings. Nonetheless, after the filing of the Second Amended Petition and the decision was announced to close the VY Station at the end of 2014, Entergy VY worked cooperatively with representatives of the State and arrived at a mutually satisfactory settlement. This demonstrates a willingness to deal fairly with the Department and ANR, which recent experience had called into question. Moreover, as part of the overall settlement, Entergy VY was willing to provide benefits that were not clearly obtainable through litigation, such as payments to the CEDF and financial commitments to aid Windham County.

In addition to the existence of the MOU, the Department highlights the fact that Entergy VY's commitments under the MOU are very specific. These specific commitments will make it more likely that Entergy VY will carry through with the MOU obligations. Furthermore, most of the specific commitments in the MOU must be met within a short time period. For example, the initial payment to the Site Restoration Fund of \$10 million occurs upon issuance of the CPG. The opportunity for Entergy VY to fail to live up to its obligations is thus more limited and can be more readily addressed. One such potential for enforcement would be through modification or revocation of this Order in the event of a violation. This could result in substantial penalties, not just for the violation of this Order, but also for potential past violations. Specifically, our issuance of an amended CPG effectively ratifies Entergy VY's operation of the VY Station since March 21, 2012, notwithstanding the Docket 6545 Sale Order that proscribed such operation. This approval removes any potential exposure Entergy VY may have to penalties for failure to comply with a Board order or operation without a CPG. Failure to meet the MOU commitments could lead to modification of this Order that could effectively remove this ex post facto acceptance of Entergy VY's ownership and operation over the last two years and expose the Company to penalties for this conduct.

Considering that the CPG will run only for a short period of time, Entergy VY's opportunities for renegeing on its commitments are also reduced. Many of the MOU commitments occur at or near the beginning of the CPG period. Entergy VY's initial \$10 million to the site restoration fund, the \$5.2 million CEDF contribution, and \$2 million of the fund to

support Windham County occur within thirty days after issuance of this Order. This means that there will be fewer commitments that are on-going and potentially could not be met. We do not downplay the necessity that any public service company authorized to do business in Vermont possess the requisite corporate character to interact fairly with the State and its residents. Nonetheless, we must give reasonable consideration to the changed context where those potential interactions are now fewer, as they are for only the remaining nine months of the amended CPG.

Finally, on balance we are persuaded that the best interests of the State of Vermont favor approval of the MOU and the granting of a CPG. The MOU reflects material benefits for the State of Vermont, some of which could not be gained through litigation. These benefits, including financial commitments, the agreement to commence site restoration promptly after decommissioning, establishment of a process for defining site restoration standards now, establishment of a date certain for termination of operations, could not all have been obtained absent the MOU. Thus, denial of the CPG would be adverse to Vermont and its consumers. In addition, as CLF observes, denial is unlikely to actually alter operation of the VY Station. Even if we denied the CPG, we would likely provide the CPG holder (Entergy VY) time to wind down activities and sell its assets (i.e., the VY Station).⁶¹ Effectively, this means that the VY Station might still operate through the end of 2014 even if the CPG was denied. By approving the MOU, the same outcome will come to pass, only with the added tangible benefits, which are enumerated throughout this Order.

VPIRG and NEC have raised concerns about our ability to rely upon Entergy VY to meet its commitments. VPIRG has proposed two possible conditions that it asserts are enforceable. However, VPIRG has not demonstrated how we could require Entergy VY to immediately request the NRC to commence decommissioning or on what basis (other than denial of a CPG) we could require an auction of the VY Station. More importantly, VPIRG has also not shown that either of these outcomes are superior for Vermonters to acceptance of the MOU. Under this approach, the State would forego the tangible benefits of the MOU that are described in this Order and would not derive other material benefits as a result.

61. Cf. *Quechee Services Co., Inc.*, Docket 5699, Order of 12/30/94, *aff'd* 166 Vt. 50 (1996).

C. Financial Soundness

Findings

72. On August 27, 2013, Entergy Corporation, the parent company, issued a press release announcing that it will shutdown and close the VY Station by the fourth quarter of 2014. Entergy Corporation cited financial factors including the impact of low natural gas prices on the wholesale price of electricity, plus the high-cost structure of the VY Station, as the basis for its decision. Exh. WRC-X; tr. 1/31/14 at 59-60 (Twomey).

73. In the first quarter of 2012, Entergy Corporation performed a fair value analysis of the undiscounted net cash flows expected to be generated by the VY Station due to uncertainty involving the continued operation of the Plant. Because of declines in the overall power markets and the projected forward prices for power, the analysis reflected probability-weighted undiscounted future cash flows as amounting to less than the VY Station's carrying value. As a result, Entergy Corporation recorded an impairment of \$355.5 million to the carrying value of the Plant resulting in an estimated fair value of the Plant and related assets of \$162.0 million as of March 31, 2012. Exh. PSD-Cross-MT-8 at 61; tr. 2/19/13, Vol. I, at 38-39 (Twomey); tr. 6/18/13, Vol. I, at 68-69, 71 (Twomey).

74. In early 2013, equity analysts at UBS Investment Research issued two analyst's reports involving Entergy Corporation's merchant nuclear fleet, Entergy Wholesale Commodities, highlighting continued cash deficits for the group and questioning the future financial viability of the VY Station. Exh. CLF-Redirect-1; exh. CLF-Redirect-2.

75. Until it discontinues operations, Entergy VY will continue to have operating revenues from the sale of the power generated by the VY Station. If natural gas prices rise, regional energy market prices and the revenue Entergy VY receives from the sale of its power also will rise. Twomey pf. at 16; tr. 2/14/13 at 136 (Tranen).

76. Entergy Corporation has made available to Entergy VY additional funds to enable the Plant to be operated safely and reliably. Tr. 6/18/13, Vol. I, at 84 (Twomey).

77. Entergy VY also maintains production interruption insurance, which may be used in the event operating revenues are not available due to an unplanned outage or similar event requiring

a complete shutdown of the VY Station. The present insurance would provide \$3.5 million per week of coverage up to a maximum of \$435 million. Twomey pf. at 16-17.

78. Since purchasing the VY Station, Entergy VY also has maintained a \$35-million credit agreement with Entergy International Holdings, Ltd., LLC ("EIHL" and "EIHL Agreement"). This agreement serves as standby financial assurance and its primary purpose is to pay costs during the bridge period between an unplanned, premature shutdown of the Plant and access to funds from the VY Station's decommissioning trust fund. Twomey pf. at 17.

79. Entergy VY also maintains a second \$35-million credit agreement with Entergy Global, LLC (formerly Entergy Global Investments, Inc.) ("EGI" and "EGI Agreement"), which serves as a revolving-credit facility to fund the VY Station's needs for working capital. Twomey pf. at 17.

80. Pursuant to its agreement in the Docket 6545 MOU, Entergy Corporation executed a \$60-million guaranty to Entergy VY as a backstop to ensure that the VY Station has sufficient cash available to maintain the VY Station between any shutdown and access to the decommissioning funds (the "Entergy Guaranty"). Entergy VY expects that this amount will remain adequate to ensure that the Plant can be operated until Entergy VY may access 20 percent of the funds in the decommissioning trust fund. Twomey pf. at 17.

81. Entergy VY is required by the terms of its NRC license to maintain these credit facilities as they exist now. Twomey reb. pf. at 4.

82. The Entergy Corporation guaranty also requires that Entergy Corporation not reduce the aggregate credit available to Entergy VY under the EGI Agreement and the EIHL Agreement to less than \$60 million. Twomey reb. pf. at 5.

83. Pursuant to the Entergy Guaranty, if the amount available to Entergy VY under the EGI Agreement is less than \$25 million and/or the EIHL Agreement is less than \$35 million, Entergy Corporation agrees that it will make available to Entergy VY the difference between the amount available under each of those agreements and \$25 million and/or \$35 million, respectively. Entergy Corporation, through the guaranty, also agrees that it will cause EGI and EIHL to perform their respective obligations under the agreements. Twomey reb. pf. at 5.

84. The Entergy Guaranty further provides that it remains in effect and is irrevocable, until such time as Entergy VY is no longer the owner or operator of the VY Station or Entergy VY has

submitted to the NRC a certification that fuel has been permanently removed from the reactor vessel and 90 days have passed since the NRC has received the post-shutdown decommissioning activities report. Twomey reb. pf. at 5.

85. Neither the EIHL Agreement, nor the EGI Agreement, nor the Entergy Guaranty states that the performance of only one, any combination, or all of these agreements is contingent upon the financial solvency of Entergy VY. Twomey reb. pf. at 6.

86. Entergy VY has sufficient funds to meet its financial obligations to the State of Vermont, including those under the MOU. Tr. 1/31/14 at 63 (Twomey).

87. Entergy VY committed to adequately fund and complete site restoration in the Docket 6545 MOU. Exh. PSD-01, at ¶¶ 3, 9.

88. Entergy VY has committed to pay \$25 million to a Site Restoration Fund and to provide financial assurance in the form of a \$20-million Entergy Corporation guaranty as part of its obligation under the Docket 6545 MOU and the related Docket 6545 Board Order dated June 13, 2002, to demonstrate that funding will be available for site restoration. Recchia pf. at 2; *see* exh. PSD-01, at ¶ 9; exh. Joint-1 at 4-5; Twomey supp. pf. at 18.

89. The MOU requires Entergy VY to pay specified amounts to the Site Restoration Fund by specified dates within the next four years, thereby reducing the risk that Entergy VY will be unable to satisfy its commitment. Recchia pf. at 4; tr. 1/30/14 at 37, 113 (Recchia); exh. Joint-1 at 4-5.

90. The \$20-million Entergy Corporation parent guaranty will go into effect when the existing Entergy Guarantee, provided pursuant to the Docket 6545 MOU, is terminated. The \$20-million Entergy Corporation guaranty helps assure that there will be sufficient funds for site restoration. If the funding required to complete site restoration exceeds the amounts available to Entergy VY from the Decommissioning Trust Fund (after payment of radiological decommissioning and SNF management costs) and from the Site Restoration Trust if it fails to reach \$60 million, then Entergy VY can use the \$20 Entergy Corporation guaranty as a backstop. Exh. Joint-1 at 4; *see* exh. EN-TMT-5; exh. PSD-01 at ¶ 13; tr. 1/31/14 at 110, 115 (Twomey).

91. The short duration of continued operation requested by Entergy VY's Second Amended Petition reduces the risk that issues related to Entergy VY's financial soundness will have a negative impact on the State. Recchia pf. at 4.

92. The \$20-million guaranty will be terminated only in the event that the money in the Site Restoration Fund grows to \$60 million. Exh. Joint-1 at 4; Recchia pf. at 3.

Discussion

In determining whether extending Entergy VY's CPG will promote the general good of the State under 30 V.S.A. § 231(a), the Board considers the financial soundness of the petitioner. Generally, we examine a utility's current and projected revenues, operating and free cash flows, debt load, and trends in equity. Where a utility has demonstrated the ability to generate sufficient cash flow for capital investments and satisfactory service, and has plausibly projected a positive or even a neutral trend on shareholder equity, we generally find that the company is financially sound.

On August 27, 2013, Entergy Corporation made an announcement that it intended to close the VY Station by year-end 2014 largely for financial reasons.⁶² Entergy VY continues to have revenues from the sale of power. Moreover, Entergy VY does not exist in a vacuum and is part of a much larger and stronger corporate organization which bolsters the overall financial soundness of Entergy VY.⁶³ In Docket 6545, we found Entergy VY to be financially sound due in part to the financial strength of Entergy Corporation and the financial assurances and safeguards Entergy Corporation agreed to put into place.⁶⁴ Although current industry conditions have become more challenging for large utilities like Entergy, such as the impact of declining wholesale prices on the power markets, Entergy remains a very large, diversified, and financially stable company. As such, we have no basis to conclude, nor does the record indicate, that Entergy Corporation will suddenly terminate any inter-company support it provides to Entergy VY between now and the Plant's near-term closure in 2014. Moreover, Entergy VY and Entergy

62. Exh. WRC-X; tr. 1/31/14 at 59-60 (Twomey).

63. *Vermont Yankee Nuclear Power Corporation*, Docket No. 6545, Order of 6/13/02 at 4, 7.

64. *Vermont Yankee Nuclear Power Corporation*, Docket No. 6545, Order of 6/13/02 at 115, 117-120.

Corporation continue to be bound by the various specific guarantees and support mechanisms approved in our Order in Docket No. 6545, as well as the MOU and NRC regulations. These mechanisms lend further support to the conclusion that Entergy VY will remain financially sound over the short duration that the VY Station continues to operate, and up until the time Entergy VY accesses the Decommissioning Trust Fund.⁶⁵

In addition, the financial assurances established in Docket No. 6545, in the form of credit agreements provided by EGI and EIHL totaling \$70 million, plus Entergy VY's corporate guaranty of \$60 million, will remain in place. As we concluded in our Order in that docket, we found that the financial assurances that Entergy Corporation had agreed to provide Entergy VY would be sufficient to ensure that Entergy VY has the resources it needs to operate and to eventually close and decommission the VY Station.⁶⁶ Despite the significant economic and financial challenges that have occurred since that time, those financial assurances remain unaffected and we conclude that we can continue to rely on them for the purposes of permitting the continued operation of the VY Station until its shutdown in 2014.

Aside from the inter-company support provided by Entergy Corporation, Entergy VY highlights the existing revenue stream from the Plant which it asserts is sufficient to meet its financial responsibilities. After Entergy VY shuts down, it argues that it can rely upon surplus revenues, supplemented by various corporate guarantees to safely shut down the VY Station and meet its obligations until it is able to access the Decommissioning Trust Fund. Following radiological decommissioning, Entergy VY states that it expects to have sufficient excess money in the Decommissioning Trust Fund to complete site restoration (assuming that the NRC grants Entergy VY permission to use such funds).

Entergy VY emphasizes that these commitments are augmented by the MOU. According to Entergy VY, the MOU (1) establishes a separate fund for site restoration, (2) provides an extra layer of assurance in the form of the Entergy Corporation Guaranty, which will remain in place so long as the Site Restoration Fund has less than \$60 million in it, and (3) even though Entergy VY will begin decommissioning once the funds in the Decommissioning Trust Fund are

65. Tr. 1/31/14 at 25, 63,105-107, 122 (Twomey).

66. *Vermont Yankee Nuclear Power Corporation*, Docket No. 6545, Order of 6/13/02 at 107.

sufficient for radiological decommissioning and spent fuel management (rather than continuing to delay decommissioning even after the funds are sufficient), the Decommissioning Trust Fund will be expended over time and interest will continue to be earned on the monies remaining in the fund, providing additional funding for site restoration.

The Department originally expressed concern about Entergy VY's ability to meet its financial obligations. Specifically, the Department focused on what it characterized as inadequate demonstration from Entergy VY that it would have sufficient funds to fully restore the VY station site, which Entergy VY committed to do as part of the Docket 6545 MOU.

The Department subsequently negotiated the MOU in this proceeding under which Entergy VY will establish the site restoration fund and provide a corporate guaranty. These commitments address the Department's concerns and go "a long way towards ensuring that Entergy VY will make good on its promise to fund and timely complete restoration of the VY Station site."⁶⁷

We find the MOU addresses many of the concerns originally raised by the Department about Entergy VY's ability to meet its site restoration obligations. Entergy VY has now committed to set aside an additional \$25 million specifically for site restoration. This money is expected to grow over time. In addition, Entergy Corporation has committed to augment this fund by an additional \$20 million to the extent it falls below \$60 million at the time it is needed. Collectively these provisions, in conjunction with residual funds in the Decommissioning Trust Fund, provide sufficient certainty that funds will be available when needed to restore the site.

Therefore, the evidence supports the conclusion that Entergy VY meets the financial soundness criterion. The Company will have continued revenues available to it for the remainder of this year through power sales. It then has corporate guaranties from the parent corporation, Entergy Corporation, and other affiliates in the event that Entergy VY has insufficient reserve funds on hand. These financial resources are expected to be adequate to fund the closure activities required by the NRC to enable access to the Decommissioning Fund. Lastly, the availability of inter-company funding from Entergy Corporation to Entergy VY (aside from the

67. DPS and ANR Brief at 13.

guarantees) provides additional assurance that Entergy VY will be able to wind down its operations as planned and to initiate decommissioning.

D. Technical Competence

Findings

93. Entergy VY operates one of the largest fleets of nuclear power plants in the United States. Twomey pf. at 2.

94. A study of the VY Station's reliability performed by Nuclear Safety Associates, consultants hired by the Department, evaluated various aspects of the VY Station. The resulting report, the Comprehensive Vertical Audit and Reliability Assessment ("CRA"), recommended operational and management changes, but found the Plant to be reliable. Entergy VY has implemented each of 93 recommendations concerning plant operations that resulted from the CRA. Tr. 2/26/13, Vol. I, at 31-33 (Buteau); tr. 2/26/13, Vol. II, at 84-85 (Vanags); exh. Board-2.

95. Since Entergy VY's acquisition of the VY Station in 2002, the Plant has operated at an average capacity factor, based on its net Maximum Dependable Capacity, above 93% from 2003 to 2011, a better capacity factor than achieved by the VY Station's previous owner. Twomey pf. at 2.

Discussion

Entergy VY has shown that it is an experienced and proficient nuclear power plant operator and has operated the VY Station since it purchased the generating facility in 2002. We find that Entergy VY has met this criterion.

E. Relationships with Other Utilities

Findings

96. Several Vermont distribution utilities purchased power from Entergy VY under a power purchase agreement that expired in 2012. Marc Potkin, Entergy VY ("Potkin") pf. at 12.

Discussion

Entergy VY has interacted with other Vermont utilities since it acquired the VY Station in 2002. Until 2012, Entergy VY sold power from the VY Station to VYNPC, the majority of which was owned by GMP and CVPS. It has also transmitted power through Vermont Electric Power Company, Inc. ("VELCO").

Over this time, Entergy VY has had disagreements with the Vermont utilities. For example, in Docket 6812-A, the Board considered a dispute related to the Ratepayer Protection Plan adopted as part of the Docket 6812 MOU. Evidence presented in this case explored a more recent dispute with GMP. However, the fact of business disagreements alone does not raise concerns about relationships with other utilities, even if they occasionally result in litigation.

Considering the totality of its history of interactions with Vermont utilities, we conclude that Entergy VY meets this criterion.

F. Section 248 Criteria**(1) Orderly Development of the Region****Findings**

97. Continuing operations at the VY Station through December 31, 2014, will allow for an orderly wind-down of operations at the VY Station, thereby reducing some of the disruption that could occur if the facility closed abruptly. Recchia pf. at 6.

98. The MOU includes several provisions that could be beneficial to the orderly development of the region following the cessation of operations at the VY Station. Recchia pf. at 5-7; Twomey supp. pf. at 14-15; exh. Joint-1 at ¶¶ 5-9 and 11.

99. The MOU obligates Entergy VY to complete by the end of this year a site assessment study of the cost and tasks of site restoration of the VY Station site. Because of this obligation, Entergy VY will likely undertake this study earlier than it would have if it closed the VY Station in the absence of the MOU. Recchia pf. at 12; Twomey supp. pf. at 18; exh. Joint-1 at ¶ 5.

100. The completion of a site assessment study before the end of this year has the benefit of "providing all stakeholders—including the Board—with better information" about site restoration early in the process. Recchia pf. at 12.

101. ENVY has committed to work cooperatively with the relevant State agencies to develop detailed site restoration standards necessary to support use of the property without limitation (excepting any independent spent fuel storage installation ("ISFSI") and any perimeter related to it), including restrictions on the demolition of decontaminated concrete structures into rubble that is buried on site. Recchia pf. at 6-7; Twomey supp. pf. at 18; exh. Joint-1 at ¶ 5.

102. The MOU includes a requirement that Entergy VY commence site restoration promptly after completing radiological decommissioning in accordance with site restoration standards developed in a process set forth in the MOU. Recchia pf. at 5-7; Twomey supp. pf. at 17; exh. Joint-1 at ¶ 6.

103. Entergy VY agrees in the MOU to establish a separate Site Restoration Fund and to deposit \$25 million into the fund if the amendment to its CPG is granted. Entergy VY would make an initial \$10 million deposit within 30 days of the issuance of the CPG and then deposit \$5 million each year for the next three years. The MOU also requires Entergy Corporation, the corporate parent of ENVY and ENO, to provide financial assurance for the Site Restoration Fund in the form of a \$20 million guarantee. That guarantee will remain in place until the Site Restoration Fund reaches \$60 million in value. Twomey supp. pf. at 18; Recchia pf. at 3; exh. Joint-1 at ¶ 7.

104. The provisions of the MOU related to site restoration (paragraphs 5, 6 and 7) likely will make some or all portions of the VY Station property available sooner for productive reuse, consistent with the orderly development of the Town of Vernon and Windham County, than would be the case in the absence of the MOU. Recchia pf. at 6-7; exh. Joint-1 at ¶¶ 5-7.

105. The MOU also gives the state a right of first refusal to purchase the land of the VY Station site should Entergy VY decide to sell part or all of the land. This right of first refusal extends to any portion of the VY Station site offered for sale, if certain sections of the site are sold before other sections. This right of first refusal could assist in the orderly development of the region. Twomey supp. pf. at 12, 14-15; Recchia pf. at 7; exh. Joint-1 at ¶ 8.

Discussion

As discussed above, in making its determination of general good under Section 231 in this proceeding, the Board is considering the relevant criteria under Section 248(b), including the issue of whether the continued operation of the VY Station until December 31, 2014, will "unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality."

The VY Station is an existing facility that has operated on its site for more than forty years. An orderly wind-down of operations at the VY Station until the end of an operating cycle would seem appropriate for a variety of reasons under any circumstances unless the negative effects to the state of such continued operation through the end of the operating cycle outweighed the benefits to the state of an orderly wind-down of operations.

Even if the Board were to accept the Department's earlier argument that the continued operation of the VY Station for an additional twenty years would interfere with the orderly development of the region,⁶⁸ there is no evidence in the record that the continued operation of the VY Station through the end of this year will unduly interfere with the orderly development of the region or that it will have negative effects on orderly development that would outweigh the benefits of an orderly wind-down of operations at the VY Station.

In addition, in their supplemental testimony, the Department and Entergy VY emphasize the benefits provided by the MOU for orderly development of the region after the VY Station ceases operation at the end of this year. Entergy VY's commitments in the MOU increase the likelihood that the restoration of the VY Station site will be completed in accordance with appropriate standards and on a more timely basis than might otherwise be the case. Such outcomes from the site restoration process are consistent with the future orderly development of the region.

WRC, in its capacity as a regional planning body for Windham County, has proposed conditions related to decommissioning and site restoration related to Section 248(b)(1).

68. DPS Initial PFD and Brief at Findings 248-251.

However, several of WRC's proposed conditions involve matters preempted by federal law that are clearly within the exclusive jurisdiction of the NRC.

We also observe that the Board has ultimate jurisdiction over non-radiological site restoration at the VY Station site. At the time of any Board review of site restoration standards, other parties in this docket and other interested persons will have the opportunity to provide comment on such standards. We also note that prior commitments, Board orders and MOUs with respect to site restoration at the VY Station and other post-operational matters remain in full force and effect.⁶⁹

(2) Need

Findings

106. ISO-New England, Inc. ("ISO-NE") is responsible for the operation and reliability of the New England bulk power system, which is comprised of generating stations and the high voltage transmission system that delivers electricity to electric utilities and other load-serving entities. ISO-NE administers New England's wholesale energy market, centrally dispatches the generating stations, and directs the flow of electricity across New England's bulk power system. Seth G. Parker, DPS ("Parker") pf. at 5-6; Potkin pf. at 3-5; Robert Stein, DPS ("Stein") pf. at 3.

107. Entergy VY operates the VY Station as a wholesale merchant plant dispatching its power into the New England grid and selling its output under rules established by ISO-NE. The output of the VY Station is sold at a market rate (that is, the marginal clearing price) determined by an ISO-NE bidding process, subject to the adjustment to reflect the terms of any bilateral power agreements. Potkin pf. at 7-8; Stein pf. at 4-5.

108. The VY Station, as a baseload plant that operates at high capacity factors, has marginal prices for its output that are almost always below the market clearing price. Asa S. Hopkins, DPS (Hopkins") pf. at 29.

69. See exh. Joint-1 at ¶ 17.

Discussion

Among the Section 248(b) factors relevant in this case to the requested "general good" determination under Section 231 is whether the continued operation of the VY Station "is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures."⁷⁰ The Second Amended Petition clearly simplifies any need assessment.

Entergy VY is now seeking authority to operate the VY Station until December 31, 2014, by which time it expects the VY Station's current operating cycle will have ended.⁷¹ As discussed elsewhere in this Order, the Board would likely have allowed a reasonable period for the VY Station to wind down its operations until the end of an operating cycle, even if the Board had denied Entergy VY's petitions for a CPG and regardless of whether Entergy VY had made a sufficient demonstration of need to satisfy the Section 248(b)(2) criteria in this proceeding for any extension of its CPG.

In any case, the VY Station will be selling its output into the New England market until December 31, 2014, and this power will almost certainly be bid into the market at a price that will ensure that it is dispatched during the short period of the facility's continued operation. Accordingly, the operation of the VY Station during this period should have some effect in displacing generators with higher marginal costs, thereby lowering regional electricity and energy prices and providing a benefit to Vermont ratepayers.

Historically, the Board has based its regional determination of need on the likelihood that the output of a generation facility will be dispatched on a regular basis to provide service to customers in the region.⁷² In this and other recent proceedings, the Department has argued for

70. 30 V.S.A. § 248(b)(2).

71. See MOU at 1, 2-3 (¶ 2).

72. Docket 6812, Order of 3/15/04 at 22 (VY Station Output Increase). See, also, the Board's recent Order in Docket No. 7833, *Petition of North Springfield Sustainable Energy Project LLC*, Order of 2/11/14 at 139:

There is no evidence on which we can rely to find, for example, that the Project would produce energy at a cost that would ensure its dispatch into the regional market, resulting in the displacement of higher-cost generating units, or how the cost of power from the Project might influence regional wholesale prices in a way that would benefit Vermont.

somewhat different and, in the case of non-renewable generation sources, more stringent standards for determining the existence of a regional need for energy, capacity and reliability.⁷³ In view of the limited period of time for which Entergy VY is now seeking to operate until the end of its current operating cycle, the Board need not reach the question in this proceeding of whether, or to what extent, it is appropriate to adopt the Department's proposed standards related to the determination of a regional need. However, even if the Board were to agree that in the longer term there was no regional need for the VY Station because such regional need could be supplied more cost-effectively by energy efficiency measures,⁷⁴ such lower-cost energy efficiency measures could not be made available to the region in time to meet any regional need that the VY Station would otherwise meet during the brief period of its continued operation through the end of this year.

(3) System Stability and Reliability

Findings

109. ISO-NE has performed an assessment of upgrades necessary to ensure system reliability through 2020. Transmission upgrades will be required in the region whether or not the VY Station continues to operate. Tr. 2/14/13 at 25-26 (Tranen); tr. 6/20/13, Vol. I, at 27-28 (Tranen); tr. 6/21/13, Vol. II, at 59-60 (Parker).

110. In 2004, Entergy VY committed to take a number of actions required by ISO-NE in connection with the power uprate of the VY Station in order to ensure the absence of any adverse effect on the transmission system. Based in part on these commitments, the Board found that the power uprate would have no adverse impact on system stability and reliability. Jeffrey Tranen, Entergy VY ("Tranen") pf. at 10; Docket 6812, Order of 3/15/04 at 24.

73. For example, *see* Dr. Hopkins' direct prefiled testimony in this Docket at 27-35.

74. *See* Hopkins pf. at 30:

Based on this significant energy efficiency potential, and the fact that energy efficiency is a lower cost resource, I conclude that the plant does not meet a regional need for energy that could not be otherwise supplied more cost-effectively through energy efficiency.

111. The continued operation of the VY Station will not involve any further change in the electrical characteristics of the VY Station. Tranen pf. at 10-11.

Discussion

Among the Section 248(b) factors relevant in this case to the requested "general good" determination under Section 231 is whether the continued operation of the VY Station will adversely affect "system stability and reliability."⁷⁵ The evidence in the record supports the conclusion that the continued operation of the VY Station will not adversely affect system stability and reliability.

Witnesses for both Entergy VY and the Department addressed this issue. There was some disagreement among the witnesses as to the extent of the contributions that the operation of the VY Station makes to system stability and reliability and as to whether the costs of transmission upgrades might be somewhat more expensive with the VY Station in operation. Despite these disagreements, the parties that have presented evidence on this issue are in agreement that this criteria is satisfied. The Department has maintained throughout this proceeding that the continued operation of the VY Station will not adversely affect system stability and reliability.⁷⁶

(4) Economic Benefit

Findings

112. Continued operation of the VY Station is expected to provide an economic benefit to the residents of Vermont that will continue for as long as the VY Station operates. Exh. EN-RWH-3; Richard Heaps, Entergy VY ("Heaps") pf. at 2; Heaps reb. pf. at 2-3; exh. EN-RWH-4; tr. 6/19/13, Vol. I, at 70, 101 (Heaps); tr. 6/18/13, Vol. II, at 240-242 (Unsworth); tr. 2/25/13 at 209, 232 (Hopkins); tr. 2/26/13, Vol. I, at 121 (Hopkins); tr. 2/26/13, Vol. II, at 14 and 18 (Rockler); tr. 2/22/13, Vol. II, at 82-84, 123-127 (Kavet).

75. 30 V.S.A. § 248(b)(3).

76. Department's Initial Brief (8/16/13) at 116; Department's Final Brief (2/14/14) at 25.

113. The VY Station provides an economic benefit through (1) its \$65.7 million in annual payroll, (2) its annual payment of taxes, and (3) the annual benefit from the avoidance of greenhouse gas emissions through its operation. Twomey pf. at 11; exh. EN-RWH-3; exh. EN-RWH-4; tr. 2/22/13, Vol. II, at 101-102, 112, 117-118 (Kavet).

114. Entergy VY's normal wage and income tax payments will continue for the period through December 2014, just as they have been throughout the VY Station's past operation. Twomey supp. pf. at 16.

115. The MOU provides for direct economic benefits in the form of payments and financial guarantees to the state: (1) \$25 million for site restoration; (2) a further \$20 million parent guarantee for the Site Restoration Fund; (3) more than \$5 million for the CEDF; and (4) \$10 million for economic development in Windham County. Twomey supp. pf. at 15; Recchia pf. at 8; exh. Joint-1 at 3-5.

116. The Vermont Agency of Commerce and Community Development ("ACCD") will use the economic development funds "to deploy the economic development payments as grants to organizations working directly in Windham County on economic development projects." Potential projects include an expansion of the Vermont Small Business Development Center advising position for Windham County, the creation of a high-tech co-working space to foster entrepreneurship, and the development of a machining apprentice program. Miller pf. at 2.

117. Another way the MOU increases the annual economic benefit is through the payment of approximately \$5.2 million from the escrow fund into the CEDF, at least half of which is to be used for activities in or for the benefit of Windham County. Twomey supp. pf. at 15-16; Recchia pf. at 8; exh. Joint-1 at 4-5.

118. The projects funded by the payments that the MOU requires ENVY to make to the CEDF will result in economic benefits for the State, including job creation. Recchia pf. at 8.

119. The ACCD will award grants to projects that will create the most effective near-term results, are set up to respond to opportunities as they develop, and will best leverage grant funds. Lawrence Miller, DPS ("Miller") pf. at 2.

120. The ACCD has experience managing economic and community development grant programs and has existing relationships with local, state, and national development organizations and government agencies. Miller pf. at 2-3.

121. An orderly wind-down of operations at the VY Station over the course of approximately ten months will mitigate the effect an abrupt plant closure might have on the local economy. Recchia pf. at 8.

122. The MOU also presents a potential economic benefit through the right of first refusal on the real property on which the VY Station is located, as the State will be allowed to purchase the land at a fair market price and take advantage of any economic opportunity the VY Station property might present. Recchia pf. at 8.

Discussion

Under Section 248(b)(4), the Board must evaluate whether approving the MOU and issuing Entergy the CPG contemplated by the MOU will result in an economic benefit to the State and its residents. Section 248 does not require us to quantify exactly how much economic benefit the State would receive from approval of the MOU; we need only determine that there will be an economic benefit.⁷⁷ However, Section 231 also requires the Board to make an overall determination as to whether the MOU will promote the general good of the State. In making this determination, we must weigh the impacts and benefits of the MOU and find that the benefits outweigh the impacts. The MOU meets this criterion, and provides real and substantial economic benefits to the State of Vermont. If approved by the Board, Entergy VY will provide the following near-term (over the course of less than 4 years) economic benefits to the State of Vermont:

- (i) \$25 million for site restoration;
- (ii) a \$20 million guarantee that will remain in place until the Site Restoration Fund grows to at least \$60 million;
- (iii) more than \$5 million for clean energy development through the CEDF; and

⁷⁷. *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.*, Docket 6812, Order of 3/15/04 at 25.

(iv) \$10 million for economic development.

These commitments represent significant amounts of money that Entergy VY might not be obligated to pay absent the MOU.⁷⁸ Each of those sums will provide a measurable positive economic benefit to the State. Combined, those payments help assure Vermont that important objectives will be advanced if we approve the MOU. In addition to those tangible economic benefits, the MOU provides for an orderly wind-down of operations at the VY Station over the course of a number of months that will avoid any jarring effect that abrupt plant closure might have on the local economy.⁷⁹

The CEDF monies will fund development of renewable technology projects in Vermont, advancing the State's clean energy objectives, and creating economic benefits, including jobs.⁸⁰ The CEDF funds will provide not only economic benefits across the State, but a specific economic benefit to Windham County, as at least 50% of the funds that will be paid into the CEDF must be directed towards Windham County if the Board approves the MOU.⁸¹

As for the \$10 million in economic development funds, not only does this sizeable amount of funding create an obvious economic benefit, the State, through the Agency of Commerce and Community Development, is prepared to put those funds to good use in Windham County if the Board approves the MOU.⁸² The ACCD will work to ensure that the economic development funds will be directed towards projects that will leverage the funds to provide the most economic benefit for the State by selecting projects that promote effective near-term results, are set up to respond to opportunities as they develop, and will leverage economic development payments under the MOU with other grant funds.⁸³ This will result in funding available for projects that "have a near-term predictable impact in terms of increasing employment and increasing wages,"⁸⁴ as well as projects with more long-term regional effects.

78. Recchia pf. at 4; tr. 1/31/14 at 144-145 (Twomey).

79. Recchia pf. at 8.

80. *Id.*

81. Exh. Joint-1 at 4-5.

82. Tr. 1/30/14 at 13-16 (Miller).

83. Miller pf. at 2-3.

84. Tr. 1/30/14 at 20 (Miller).

As noted above, the economic benefit requirement of the statute is satisfied when "a comparison of costs and benefits yields a net economic benefit to the State."⁸⁵ The prompt, substantial, and tangible economic benefits now offered by the MOU, are more than sufficient to satisfy this standard. Therefore, based on these facts, we conclude that the MOU will provide economic and fiscal benefits to the State and Windham County, and provide for a less disruptive transition once the VY Station ceases operation.

(5) Aesthetics, Historic Sites, Air and Water Purity, the Natural Environment and Public Health and Safety

In making a determination of the general good under Section 231, the Board may consider whether the continued operation of VY Station will have "an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety."⁸⁶ As provided in Section 248(b)(5), this assessment includes due consideration of the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K) and greenhouse gas impacts. The most significant contested issue related to Section 248(b)(5) criteria raised in this proceeding concerns the effect that continued thermal discharges into the Connecticut River would have on the natural environment and wildlife, particularly migrating fish species.

Water and Air Pollution

Criteria Related to Discharges of Heated Effluent into Connecticut River

[30 V.S.A. § 248(b)(5)]

[10 V.S.A. § 6086(a)(1)(A)-(C), (E)-(G), (a)(2), (a)(3)]

123. The continued, short-term operation of the VY Station will not cause undue air or water pollution and will comply with applicable regulations adopted by the Vermont Department of

85. *Entergy Nuclear Vermont Yankee*, Docket 7082, Order of 4/26/06 at 36.

86. 30 V.S.A. § 248(b)(5). *See* III. Legal Framework – A. Section 231 Standards, above. This consideration has greater relevance where the entity has a single operating facility, so that there is an integral link between authorization of a company to own and operate a business under Section 231 and potential environmental impacts.

Environmental Conservation ("VDEC"). This finding is supported by findings 124-157 and 171-192, below.

124. The VY Station is a boiling water nuclear reactor with a rated core thermal power level of 1,912 megawatts ("MW"), providing a gross electrical output of 620 MW. The remainder of the energy, 1,292 MW, must be removed as heat and discharged either as heated water (or effluent) from an outfall to the Connecticut River or as steam via mechanical draft cooling towers to the atmosphere. Marcia Greenblatt, DPS ("Greenblatt") pf. at 2.

125. The VY Station is located on the western shore of the Vernon Pool, an impoundment on the Connecticut River created by the Vernon Dam. Exh. EN-CS-3 at 1; exh. EN Cross-25; Greenblatt pf. at 2.

126. The Vernon Dam is a hydroelectric generation facility located approximately 0.5 miles downstream from the VY Station's thermal discharge outfall. Greenblatt pf. at 2; exh. EN-CS-7 at 2.

127. Installed in 1981, the Vernon Dam's fish passage facility, or "fish ladder," is located on the western shore adjacent to the powerhouse. Exh. EN Cross-1 at 2-2, 2-5, and 2-17.

128. The VY Station holds permits issued by the VDEC regulating water supply, domestic wastewater disposal, and stormwater runoff; those permits will be maintained, and their conditions will continue to govern the VY Station's use of water. Goodell pf. at 4.

129. The VY Station's thermal discharges have complied with its NPDES permit. Tr. 2/20/13, Vol. I, at 69-70 (Deen).

130. The VY Station uses water for the purpose of creating steam to generate electricity. The water used to generate steam is circulated within the VY Station in a closed-cycle (so that this water is not discharged back to the Connecticut River), and Entergy VY has no plans to change the operations of this system. John Goodell, Entergy VY ("Goodell") pf. at 4.

131. The VY Station also draws water from the Connecticut River for the purpose of cooling the water used to create steam. The cooling water system can operate in an open-cycle (all water discharged back to the Connecticut River), closed-cycle (with no discharge and heat dissipated through the cooling towers) or hybrid mode. The VY Station's withdrawal of cooling water from and its discharge of heated water into the Connecticut River is regulated by ANR under an

NPDES permit that ANR administers under the federal Clean Water Act ("CWA") and applicable Vermont law. Entergy VY has filed a timely application for renewal of the NPDES permit. Goodell pf. at 5, 11; *see generally* exh. ANR-EK-2; *In re Entergy Nuclear Vt. Yankee Discharge Permit 3-1199*, 2009 VT 124, ¶ 8 n.4, 989 A.2d 563.

132. The NPDES Permit is based on information, studies and data that are at least thirteen years old, while the amended portions of the Permit are based on studies and data that are at least eight years old. Tr. 2/13/13, Vol. II, at 74-76 (Goodell).

133. As of the time of hearings, ANR had not received sufficient data from Entergy VY to draft a new NPDES permit for the VY Station. Ernest Kelly, ANR ("Kelly") pf. at 9; tr. 2/21/13, Vol. II, at 69-70 (Kelly); exh. ANR-EK-3.

134. Thermal discharge is a pollutant that "influenc[es] fish performance and survival." Kenneth M. Cox, ANR ("Cox") pf. at 5-6.

135. Water temperature significantly affects fish behavior, health, growth, reproduction, and survival. Cox pf. at 5-6; exh. ANR-KC-7.

136. The location of the discharge of heated effluent into the Vernon Pool upstream and on the same side of the river as the Vernon Dam Fish Ladder and the downstream fish passage facilities, and uncertainty about the full mixing and extent of the thermal plume create the potential for impacts to fish. Cox pf. at 6.

137. To date, there have been issues concerning the adequacy of information defining the full extent and characteristics of the thermal plume from the VY Station and the potential impacts of that plume on certain fish species. Cox pf. at 3-4.

138. Under the MOU, Entergy VY must address with ANR through the NPDES permit process the issues related to its thermal discharge raised in this docket. Recchia pf. at 9-10; Twomey supp. pf. at 16; tr. 1/30/14 at 166-167, 181-182 (Twomey); tr. 1/31/14 at 36-37 (Twomey); exh. Joint-1 at ¶ 4.

139. Under the MOU, among the thermal discharge issues Entergy VY must address with ANR in the NPDES process is the possibility of operating the VY Station in closed cycle. Tr. 1/30/14 at 94-95 (Recchia); tr. 1/30/14 at 171-172 (Twomey); tr. 1/31/14 at 36-37 (Twomey); *see* exh. VNRC-CRWC-MOU-Cross 1 at 22.

140. Issues that may be evaluated as part of ANR's review could include concerns raised by the parties in this Docket, as well as issues raised by the Environmental Advisory Committee ("EAC"). Tr. 1/31/14 at 37 (Twomey).

141. The EAC, which has an advisory function concerning discharges from the VY Station, recommends implementation of closed-cycle cooling at all times at least until the outstanding concerns regarding the effects of the thermal discharge on biota in the River have been adequately assessed. Exh. VNRC-CRWC-MOU-Cross-1 at 6, 22.

142. The MOU establishes a cooperative process between Entergy VY and ANR in which certain concerns may be addressed on a short-term basis outside the normal permitting process and the appellate rights that pertain to that process. Tr. 1/30/14 at 176-177 (Twomey).

143. If ANR imposed a condition requiring closed-cycle cooling through the NPDES permit process, such a condition would not be inconsistent with the MOU. Under the MOU, Entergy VY retains the right to challenge such conditions. Tr. 1/31/14 at 37-38, 126 (Twomey).

144. Entergy VY's obligation in the MOU to address with ANR issues related to thermal discharge from the VY Station may allow ANR and Entergy VY to take up certain issues sooner, that is, on a "shorter term basis" than would be the case in the course of the ongoing NPDES permit renewal process. Tr. 1/30/14 at 176-177 (Twomey).

145. Once the VY Station stops producing power commercially, it will continue to draw service water from the Connecticut River, but at only 6 percent of its operating usage; as a result, the extent of the thermal discharge will greatly diminish after nuclear power generating operations at the VY Station cease. Tr. 1/30/14 at 98-99 (Recchia); exh. VNRC-CRWC-MOU-Cross 1 at 22.

Discussion

The Board's evaluation of the environmental impacts of issuance of a CPG to Entergy VY under Section 248(b)(5) includes an assessment of whether issuance of the CPG would result in undue adverse impact upon water quality. In the context of Entergy VY, this discussion is focused on the thermal discharge from the VY Station.

The VY Station has several discharges of pollutants into the Connecticut River. The most significant of these is the heated discharge of non-contact cooling water. To cool the steam used to generate energy, the VY Station continuously draws large quantities of water from the River. The cooling water absorbs much of the heat from the steam. This waste heat is then discharged back into the Connecticut River and is considered to be a pollutant under the CWA because of the temperature. Alternatively, Entergy VY can operate in a closed-cycle in which the water is not discharged, but instead cycles through the cooling towers to dissipate heat. In this proceeding, several parties raised concerns about the effects of the thermal discharge on the River.

Entergy VY has consistently maintained that the thermal discharge does not result in undue adverse water quality impacts. First, Entergy VY highlights the fact that its discharge is regulated by an NPDES permit issued by ANR and that it has complied with that permit. According to Entergy VY, the Board should defer to that permit as being protective of water quality, particularly since ANR is the agency with expertise over such issues. Second, Entergy VY presented evidence that, it contends, demonstrates that the thermal discharge is not adversely affecting fish species in the River.

Third, Entergy VY maintains that the MOU addresses outstanding concerns. Entergy VY argues that ANR's post-hearing reply brief that was filed before the MOU requested two conditions on any CPG: compliance with the NPDES permit and cooperation with ANR in the permitting process. According to Entergy VY, the MOU addresses both concerns, in particular because of the agreement to implement any agreed-to adjustments without the need for formal administrative processes.

At the time Entergy VY was seeking permission to own and operate the VY Station for an additional 20 years, the Department and ANR contended that Entergy VY failed to show that granting the 20-year CPG would not create an undue adverse impact on water purity and the natural environment. ANR, in particular, highlighted uncertainty about the impact of the thermal discharge on several fish species. With Entergy's Second Amended Petition and the shorter requested term of the CPG, ANR and the Department now maintain that the short-term nature of the ongoing permitted thermal discharge diminishes the concerns over water purity. Under the

MOU, which requires Entergy VY to pursue issues relating to the VY Station's thermal discharge with ANR through the NPDES permit process, these parties contend that ANR, the agency with the responsibility for and significant technical expertise on such issues, can adequately address thermal discharge issues. They assert that the MOU commits Entergy VY to address with ANR issues related to the thermal discharge on a "shorter term basis" than otherwise would be the case under the normal timeframe of the NPDES permitting process. Such examination would include the possibility of operating the VY Station in closed-cycle-cooling mode. The requirement to work with ANR, they argue, mitigates concerns about the effects on the natural environment associated with granting a CPG.⁸⁷

VNRC/CRWC ask the Board to conclude that Entergy VY has failed to prove that the continued operation of the VY Station will not have an undue adverse effect on the water purity and the natural environment of the Connecticut River. VNRC/CRWC argues that Entergy VY relies upon its NPDES permit, but that the evidence submitted is adequate to rebut that presumption. Weighing that evidence, VNRC/CRWC urge us to find that the "outdated" permit is not sufficient to assure protection of the River. VNRC/CRWC adds that the recent analysis of the EAC, an advisory committee of governmental scientists, supports this conclusion; that panel advocated implementation of closed-cycle cooling. VNRC/CRWC contends that the MOU is not sufficient to assure that Entergy VY will cooperate with ANR. Therefore, they argue that the Board should deny the CPG, or, at a minimum, require such closed-cycle operation.

NEC argues that the Petitioners have failed to demonstrate that issuance of a CPG will not result in undue adverse water quality impacts. In particular, NEC focuses on the impact of the thermal discharge on American Shad. In light of the absence of benefits to Vermont other than financial gain, NEC argues that this impact is undue.

The evidence in this proceeding raises questions about the effect of the discharge from the VY Station on the Connecticut River. On the one hand, Entergy VY has complied with the limits in its NPDES permit. That permit was developed based upon the applicable legal requirements, including a variance under Section 316 of the federal Clean Water Act, which requires certain showings about the affect of the discharge on indigenous species.

87. Tr. 1/30/14 at 96 (Recchia).

Countering this information are various analyses suggesting that the increase in river temperature resulting from the discharge is such that various fish species are affected. These witnesses report smaller number of shad in many of the past years. They also question various assumptions about whether the actual thermal impact is being accurately measured and whether the actual stream impacts are fully known. ANR itself, the entity that issued the prior NPDES permit, questions whether it is adequately protective at the present time. Other scientific analyses, such as by state and federal governmental scientists on the EAC, are similar.

If the VY Station were going to operate for an additional eighteen years, this evidence might cause us to conclude that Entergy VY had not met its obligation to demonstrate that the discharge would not adversely affect the water quality. However, under the Second Amended Petition and the MOU, the VY Station will cease operations at the end of this calendar year. This means that the thermal discharge will occur for at most one spring spawning season, the period that all witnesses agree is the most sensitive for the various fish species in the river.

Through the MOU, the Department, ANR and Entergy VY have provided a mechanism to address these short-term concerns. Specifically, these parties have agreed that they will work through the thermal discharge issues as part of the NPDES permit renewal. But more importantly, as an Entergy VY witness testified, the process could allow ANR to address thermal discharges more quickly than through the permit, using other mechanisms.

We find the MOU's treatment of the water quality issues to be an acceptable result. This resolution contemplates that significant judgement will be brought to bear on this matter by the agency with the expertise and primary state responsibility over water quality. We also find it noteworthy that ANR, which had previously asked that we deny Entergy VY's petition on water quality grounds, is now persuaded that the administrative process set out in the MOU is workable and adequately protective of the environment. And we must stress, although there are concerns about the water quality impacts, the evidence does not support a finding that there is impairment of the Connecticut River. This is not to suggest that opponents had the burden of demonstrating such impairment; quite clearly, Entergy VY must show the absence of undue water quality impacts. For the short remaining operational period for the VY Station, we conclude that they

have met this showing, subject to the conditions in the MOU that establish a process whereby any issues can be addressed.

The VY Station is expected to continue to have a thermal discharge even after it terminates operations at the end of the year. Cooling water is still needed, but the water usage is expected to be only about six percent of current levels. No parties presented evidence suggesting that these remaining discharges could impair water quality. In any event, the MOU's methodology will allow these remaining thermal discharges to be addressed.

We understand VNRC/CRWC's position that we should order that Entergy VY implement closed-cycle operation. As these parties argue, such a condition would avoid the large permitted thermal discharge. For two reasons, we do not accept this recommendation. First, as discussed above, with the agreement to cease operations at the end of this year, the VY Station will have a thermal discharge for a limited time. Second, the evidence, while raising questions about the effects of the thermal discharge is also not sufficient to demonstrate that there is actual impairment.

Finally, CLF, while not opposing issuance of the CPG and approval of the MOU, observes that the MOU provisions fail to provide specific benefits or commitments on which the Board can rely to make a determination regarding the thermal discharge and water quality impacts. For the reasons set out above, we disagree. The MOU does not now require specific action. However, it does establish a process for resolution of such issues which Entergy VY has agreed to pursue. This process, and ANR's ability to impose requirements as a result, is sufficient to protect water quality for the short remaining operating period of the VY Station.

Greenhouse Gas Impacts

146. Nuclear electrical generation facilities such as the VY Station produce substantially fewer carbon emissions per kWh of electricity produced than coal or natural gas-fired power plants. Tr. 2/15/13, Vol. I, at 78-79 (Lester).

147. Electricity required to replace the power generated by the VY Station is likely to come primarily from natural gas-fueled generation sources and the marginal emission rate of electric

generation facilities in the ISO-NE region is approximately 900 lbs of carbon dioxide per MWh. Tranen pf. at 25.

148. Entergy VY is currently holding approximately \$5.2 million of payments to the CEDF in escrow. Under the terms of the MOU, these payments will be released from escrow and paid into the CEDF within 30 days of a Board Order approving the MOU. Exh. Joint-1 at ¶ 9.

149. The purpose of the CEDF is "to promote the development and deployment of cost-effective and environmentally sustainable electric and thermal energy resources" Additional funding for the CEDF will be used to leverage private investment and fund additional development and deployment of such resources. Exh. PSD-ASH-01 at 142; tr. 1/30/14 at 138 (Recchia).

150. The additional resources funded by the CEDF funds currently held in escrow "will reduce the amount of energy generated from non-renewable sources and the carbon dioxide and other air pollutant emissions associated with that generation." Recchia pf. at 9.

Discussion

In regard to the greenhouse gas impacts of continued operation of the VY Station pursuant to the MOU, we find that approval of the MOU is expected to result in a greater reduction in total greenhouse gas emissions than would result either from an immediate shutdown or continued operation absent the commitments made in the MOU. Prior to Entergy VY's announcement of its intention to close the Plant at the end of December, 2014, witnesses for the Department suggested that the greenhouse gas emissions impacts of a closure of the VY Station could not be accurately determined to be positive or negative.⁸⁸ This is because in the long term, it is not clear what resources would replace the VY Station. However, in the short to medium term, the closure of the VY Station is expected to result in a net increase of greenhouse gas emissions given the current marginal emissions rate in the ISO-NE region and the likelihood that replacement power will come primarily from higher-emission natural gas units. As such, continued operation of the VY Station through December 2014 can be expected to result in less total greenhouse gas emissions than would be the case if the Plant were to not operate. In

88. See tr. 6/28/13, Vol. I, at 109 (Hopkins) and tr. 6/28/13, Vol. II, at 10-11 (Hopkins).

addition, we find that approval of the MOU will result in additional greenhouse gas emission reductions as a result of the release of funds to the CEDF to be used for new renewable energy or energy efficiency projects, which can be expected to displace existing sources of fossil fuel generation, providing further emissions reductions.

Air Pollution

151. Continued operation of the VY Station will not change the VY Station's air emissions and air emissions will comply with applicable regulations. Goodell pf. at 3-4, 6.

152. The VY Station is a registered source as defined by Section 5-801 of the State of Vermont Air Pollution Control Regulations and makes the required reports and payment of fees for the annual renewal of its Air Source Registration. Goodell pf. at 3.

153. The sources of emissions at the VY Station include two oil-fired boilers, an oil-fired hot-air furnace, and three existing diesel-powered emergency electric generators. Goodell pf. at 3.

154. These minor sources are typical systems for heating and emergency-backup power for a commercial/industrial site and are not directly related to the production of electricity. Goodell pf. at 3-4.

155. The Board recently approved installation of an additional blackout generator for the station, finding that it will not have an undue adverse effect on air purity. Docket 7964, *Pet. of Entergy VY for a Cert. of Pub. Good to Install a Diesel-Driven Station Blackout Elect. Generator*, Order of 6/6/13 at 18-19.

156. Air emissions from the VY Station include cooling tower drift, which contains particulate matter as well as treatment agents. Raymond Shadis, NEC pf. at 21-24.

157. There has been no adverse air quality impact from cooling tower drift. Tr. 6/27/13, Vol. I, at 66 (Thomas).

Discussion

NEC argues that Entergy VY has failed to meet its burden of demonstrating that issuance of a CPG will not result in undue air emissions. NEC points to the emissions of biocides and particulate matter in the cooling tower drift as being potentially adverse and dangerous.

Entergy VY maintains that its air emissions will not cause undue air pollution. According to Entergy VY, the air emissions at the VY Station have not changed and comply with applicable regulations. As to the cooling tower drift, Entergy VY maintains that there is no evidence that such drift is causing undue air pollution. Entergy VY also asserts that the NRC had reviewed the VY Station's cooling tower drift as part of the Plant's Site Specific Environmental Impact Statement and found that the drift did not involve pollutants that are sufficient in quantity for regulation.

The evidence supports the conclusion that there will not be undue air pollution from the VY Station. Issuance of an amended CPG is not expected to change the emissions from the VY Station. Moreover, we find no persuasive evidence that the existing emissions are causing undue air pollution at present.

Aesthetics

[30 V.S.A. § 248(b)(5)]
[10 V.S.A. § 6086(a)(8)]

158. The VY Station site is an industrial complex comprised of 148 total acres, 94 of which are developed, eight of which are marginally developed, and 46 of which are undeveloped.

Dodson pf. at 8.

159. The VY Station has existed on its site for more than 40 years. Dodson pf. at 5 and 8.

160. No changes to the VY Station site are currently proposed as a result of, or associated with, continued operation of the VY Station that would alter the present visual character of the VY Station and the surrounding area. Dodson pf. at 5 and 8.

161. Continued operation of the VY Station will result in minimal incremental visual impacts. Dodson pf. at 8.

162. The main visible change that would result from the cessation of operations at the VY Station would be the elimination of the vapor plume. The vapor plume refers to the moist air

exiting the cooling towers that condenses into water vapor under certain atmospheric conditions. Dodson pf. at 5.

163. A cessation of operations at the VY Station would have a minimal effect on the visual character of the VY Station. There will be no significant improvement of scenic views until most of the structures at the site are removed. Dodson pf. at 5 and 31.

164. The MOU specifies the "removal of structures," which would include both above-ground structures and their underground foundations, as something to be addressed by the site restoration standards that Entergy VY, the Department, ANR, and VDH will develop. Recchia pf. at 9; exh. Joint-1 at ¶ 5; tr. 1/31/14 at 134-135 (Twomey).

165. The MOU creates a structure for cooperation on site restoration and provides additional assurance for the completion of site restoration. Recchia pf. at 9; exh. Joint-1 at ¶¶ 5-6.

166. The MOU provides that Entergy VY will complete a site-assessment study by the end of 2014. Using that site assessment, Entergy VY, the Department, ANR, and VDH will work in good faith to determine in a timely and cost-effective manner overall site restoration standards necessary to support use of the property without limitation. Exh. Joint-1 at ¶ 5.

167. Entergy VY commits in the MOU to promptly commence site restoration after the completion of radiological decommissioning. Exh. Joint-1 at ¶ 6.

168. The MOU provisions establishing a site restoration fund will help ensure that funds will be available to cover costs of site restoration, including removal of structures. Recchia pf. at 9; exh. Joint-1 at ¶ 7.

169. As a consequence of the MOU, site restoration work, including the removal of structures, will likely occur sooner than in the absence of the MOU. The removal of structures will have a positive influence on the aesthetics of the site and surrounding area. Recchia pf. at 9; exh. Joint-1 at ¶¶ 5-7; Dodson pf. at 5 and 31.

Discussion

The VY Station's structures will be present on the site and have an aesthetic impact for years to come whether or not the Board grants a CPG authorizing operation until December 31, 2014. Continued operation of the VY Station through the end of this year is not likely to have an

appreciable aesthetic impact. Given the prior existence of the VY Station, its continued operation during this brief period presents no undue adverse effect under the aesthetics criteria of Section 248(b)(5).

Any adverse aesthetic impact of the VY Station's continued operation through this year must also be considered in light of MOU provisions that may have a favorable effect in reducing the magnitude and duration of the adverse aesthetic impact of the VY Station. Provisions of the MOU, as set forth in the findings above, may favorably influence the timing of site restoration, including the removal of structures, and increase the likelihood that site restoration will be completed in accordance with agreed standards and with adequate funding.

Historic Sites

[30 V.S.A. § 248(b)(5)]

[10 V.S.A. § 6086(a)(8)]

170. No significant changes are proposed for the VY Station, and continued operation of the VY Station will have neither adverse nor undue impacts on historic sites. Dodson pf. at 9.

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

171. The VY Station is located on the Connecticut River. The Connecticut River has not been designated an outstanding resource water by the Vermont Water Resources Board. Accordingly, the continued operation of the VY Station does not implicate this criterion. Goodell pf. at 18.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

172. The VY Station site is not in the headwaters of a watershed characterized by steep slopes and shallow soils. The site is in the Connecticut River drainage area, which is greater than 20 square miles, and the site is at an elevation of approximately 252 feet above sea level. Goodell pf. at 6.

173. The VY Station area is not the watershed of a public water supply as designated by the Vermont DEC Water Supply Division. Goodell pf. at 6.

174. Surface water at the VY Station area does not have the opportunity to reach the bedrock aquifer in any significant amounts, and the VY Station is thus not located in a significant aquifer-recharge area. Goodell pf. at 6.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

175. Entergy VY intends to operate the VY Station in accordance with all applicable regulations of the Vermont DEC regarding the disposal of waste. Goodell pf. at 6.

176. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not result in any physical changes to the VY Station's facilities, so continued operation will not create new, construction-related waste material or non-radiological harmful or toxic substances. Entergy VY intends to dispose of any non-radioactive waste at a certified, solid-waste-management facility in Vermont or another state. Goodell pf. at 6.

Discussion

The Board's consideration of waste disposal related to the continued operation of the VY Station has not included nuclear waste issues. These issues are primarily within the jurisdiction of the NRC and not of the Board.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

177. During the continued operation of the VY Station, Entergy VY, whenever feasible, intends to consider water conservation, incorporate multiple use or recycling where technically and economically practical, utilize the best available technology for such applications, and provide for continued efficient operation of these systems. Goodell pf. at 8.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

178. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not restrict or divert the flow of flood waters or endanger the health, safety, and welfare of the public or riparian owners during flooding. Goodell pf. at 8.

179. Other than the river-intake and discharge structures, the VY Station's structures, built at an elevation generally around 252 feet above sea level, are outside of the 100-year and 500-year floodplains. Goodell pf. at 8; exh. EN-JG-6.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

180. Other than a small and unnamed, intermittent stream-drainage channel approximately 500-feet long located west of the VY Station area, the only waterway near the VY Station area is the Connecticut River. Goodell pf. at 9.

181. This seasonal stream is not likely to be affected by the continued operation of the VY Station, as it has been receiving Plant runoff since the original Plant's construction and remains in a stable condition. Goodell pf. at 9.

182. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will maintain the natural conditions of streams and not endanger the health, safety, or welfare of the public or of adjoining landowners. Goodell pf. at 8-9.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

183. Stormwater runoff from the VY Station site to the Connecticut River is through overland flow and from the existing stormwater system discharging directly to the river. Runoff to the Connecticut River is regulated under stormwater discharge operating permits and the VY Station's NDPES permit. Goodell pf. at 9.

184. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will require periodic trimming of brush along the shoreline for security purposes. This activity is not likely to destabilize the soil. Goodell pf. at 10.

185. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will have no additional impact on the Connecticut River shoreline or adjacent waters, or on recreational and other access to the water. Continued operation will not result in the removal of vegetation or destabilize the shoreline's bank. Goodell pf. at 8-9.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

186. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not violate any rules of the Water Resources Board relating to significant wetlands. Goodell pf. at 10.

187. There are no mapped, Class I or Class II wetlands on the operational portion of the VY Station's site. Goodell pf. at 10; exh. EN-JG-4; exh. EN-JG-7.

188. The VY Station's site plan does show several small wetlands that are subject to the U.S. Army Corps of Engineers' jurisdiction. These wetlands are located in areas of the site that see little activity. Goodell pf. at 10; exh. EN-JG-4.

189. To ensure that wetland areas are not inadvertently affected in the future, wetland areas have been mapped to allow easy review prior to any site projects. Goodell pf. at 11; exh. EN-JG-8.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2) & (3)]

190. The VY Station's supply and use of water is governed by water supply/wastewater disposal permits and public water system permits. Goodell pf. at 8; exh. EN-JG-9.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

191. The VY Station is located on a relatively flat site above the Connecticut River and over the years has been engineered to establish stormwater-drainage systems and other erosion-stabilizing features. Ongoing stormwater discharges at the VY Station are authorized under ANR stormwater-operating permits. Goodell pf. at 12-13.

192. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not cause unreasonable soil erosion or reduce the capacity of the land underneath the VY Station to hold water. Goodell pf. at 13.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

193. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not cause unusual congestion or unsafe conditions with respect to transportation. Goodell pf. at 13-14.

Educational Services

[10 V.S.A. § 6086(a)(6)]

194. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will have no additional impact on educational services. Goodell pf. at 14.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

195. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not place an undue burden on the ability of the Town of Vernon to provide municipal or governmental services. Goodell pf. at 14-15.

**Rare and Irreplaceable Natural Areas and Wildlife, Including Necessary Wildlife Habitat
and Endangered Species**

[10 V.S.A. § 6086(a)(8)]
[10 V.S.A. § 6086(a)(8)(A)]

196. The effect of the continued operation of the VY Station on the wildlife habitat and endangered species of the Connecticut River is discussed in findings 123 to 145, above.

197. The VY Station is wholly located in an area that has been previously and extensively developed since the late 1960s. Goodell pf. at 16.

198. The Vermont Fish and Wildlife Department reviewed its database in 2008 for documented occurrence of rare, threatened, and endangered species and significant natural communities in the vicinity of the VY Station site, and provided an update of this information in June 2012. The provided information indicates that the locations of the observed species and natural communities included in the database are not within the operational portions of the VY Station site. Goodell pf. at 15-16.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

199. The issuance of an amended CPG to Entergy VY authorizing it to continue to own and operate the VY Station will not unnecessarily or unreasonably endanger the public or quasi-public investment in or materially jeopardize or interfere with the functioning, efficiency or safety of, or the public's use or enjoyment of, or access to the Connecticut River or any governmental or public utility facility, service, or lands. Goodell pf. at 17-18.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

200. The Chief of the Vernon Police Department and Chief of the Vernon Volunteer Fire Department have determined that continued operation of the VY Station will not have an undue adverse effect on non-radiological public health and safety. Goodell pf. at 18; *see* exh. EN-JG-10; exh. EN-JG-11.

Discussion

The Board's consideration of public health and safety issues related to the continued operation of the VY Station has not included any issues of radiological safety. These issues are within the jurisdiction of the NRC and not of the Board.

(6) Least-Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

As the Board has found previously, Entergy VY is a wholesale utility that does not distribute or transmit electricity to the public, and thus is not required to submit an integrated resource plan pursuant to 30 V.S.A. § 218c.⁸⁹ Therefore, this criteria is not applicable.

(7) Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

Findings

201. Continued operation of the VY Station through December 31, 2014, pursuant to the MOU, is in compliance with the *Electric Energy Plan* approved by the Department under 30 V.S.A. § 202 (the Comprehensive Energy Plan or "CEP"). This finding is supported by findings 202 through 204, below.

202. The CEP does not state a position as to the closure of the VY Station. Exh. PSD-ASH-01 at 127.

203. The CEP establishes a goal of meeting 90 percent of the State's energy needs with renewable energy by 2050 and specifically recognizes the CEDF in contributing to the development of additional renewable resources within the state. Exh. PSD-ASH-01 at 3 and 142.

204. Entergy VY has agreed to release approximately \$5.2 million in payments to the CEDF previously held in escrow, which will now be used to support renewable energy and energy efficiency resources in Vermont, thus furthering the renewable goals of the CEP. Twomey supp. pf. at 17; Recchia pf. at 9; exh. Joint-1 at ¶ 9.

89. See Docket 6812, Order of 3/15/04 at 103; Docket 6480, Order of 6/27/01 at 7.

Discussion

Among the Section 248(b) factors relevant in this case to the requested "general good" determination under Section 231 is whether the continued operation of the VY Station is "in compliance with the electric energy plan approved by the Department under section 202 of this title, or that there exists good cause to permit the proposed action."⁹⁰ Prior to Entergy VY's filing of the Second Amended Petition and entrance into the MOU, and the associated reduced period of operation and commitment to release CEDF payments, the Department's witnesses raised questions as to whether granting a CPG to Entergy VY would meet this criteria on the grounds that nuclear energy is not a renewable resource and thus would not contribute to the 90 percent renewable energy goal.⁹¹ However, in light of the reduced period of operation and, in particular, the agreement to release CEDF payments previously held in escrow by Entergy VY, it is evident that the approval of the MOU and a decision to grant a CPG will result in an increase in the availability of resources to fund new renewable projects and, as such, will be compliant with the CEP.

(8) Service by Existing or Planned Transmission Line

[30 V.S.A. § 248 (b)(10)]

205. The VY Station can be served economically by existing transmission facilities without undue adverse effects. Twomey pf. at 16.

206. The VY Station uses existing transmission facilities and does not impose additional costs on Vermont distribution utilities or customers. Twomey pf. at 16.

G. Storage of Spent Nuclear Fuel

In the MOU, Entergy VY, the Department and ANR agree that the Board should issue a CPG effective as of March 21, 2012, for the storage of SNF derived from operation after that date.

90. 30 V.S.A. § 248(b)(7).

91. *See, e.g.*, Hopkins pf. (1/15/13) at 48-50.

At the time the Board authorized Entergy VY to construct a dry fuel storage facility for SNF, the Board included a condition limiting the cumulative total amount of spent fuel stored at the VY Station to the amount derived from the operation of the facility up to, but not beyond, March 21, 2012.⁹² Entergy VY's Second Amended Petition contained a request for "such approvals from this Board as may be required" to operate the VY Station until December 31, 2014, "including all necessary incidents of such operation, including without limitation the storage of spent nuclear fuel." Entergy VY represents that the Board has the requisite authority under Section 231 to authorize the continued storage of SNF. In the alternative, Entergy VY also seeks SNF storage permission under Chapter 157 of Title 10.

We conclude that our statutory authority under Section 231 enables us to issue a CPG to Entergy VY authorizing the continued storage of SNF at the VY Station and removing the limitation in the Docket 7082 CPG. As we conclude that approval of the MOU is in the best interest of the State of Vermont, we also conclude that the clause in the Docket 7082 CPG that limits the cumulative total amount of spent fuel stored at the VY Station to the amount derived from the operation of the facility up to, but not beyond, March 21, 2012, should be given no further effect. This change, which is encompassed within the relief Entergy VY requested in the Second Amended Petition, is necessary to give effect to the Section 231 CPG we issue today.

V. GENERAL GOOD OF THE STATE

The issue before the Board in this proceeding is whether the issuance of a CPG to Entergy VY authorizing it to own and operate the VY Station through the end of this year (including all necessary incidents of such operation) will promote the general good of the State. In the previous sections, we have evaluated each of the criteria that we typically assess in deciding whether to issue a CPG under Section 231. In this section, we consider other factors that weigh on the question of whether issuance of a CPG promotes the general good of the state.

92. Docket 7082, Order of 4/26/06 at 90.

A. Decommissioning and Site Restoration

Findings

207. Under NRC regulations, "DECON" is defined as "the alternative in which the equipment, structures, and portions of a facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use shortly after cessation of operations." Exh. EN-TLG-2 at viii.

208. Under NRC regulations, "SAFSTOR" is defined as "the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use." Under NRC regulations, decommissioning is required to be completed within 60 years, and longer time periods are considered only when necessary to protect public health and safety. Exh. EN-TLG-2 at ix.

209. There are three general stages in the decommissioning process: preparations; decommissioning operations and license termination; and site restoration. Exh. EN-TLG-2 at Section 2.

210. Radiological decommissioning activities will be funded by the Decommissioning Trust Fund. William A. Cloutier, Jr., Entergy VY ("Cloutier") pf. at 11.

211. The purpose of the Decommissioning Trust Fund is to meet NRC requirements for radiological decommissioning and license termination. Tr. 2/12/13, Vol. I, at 60-61 (Cloutier).

212. The fund was "set up for radiological decommission[ing]," and is intended "first and foremost, to ensure that the radiological remediation of the VY Station site and termination of the Plant's operating license is successfully completed, *i.e.*, decommissioning, as defined by the NRC." Tr. 2/12/13, Vol. I, at 60 (Cloutier); Cloutier pf. reb. at 12.

213. When the NRC reviews the adequacy of a decommissioning fund, it looks at the fund in relation to radiological decommissioning only, and does not assess adequacy with respect to additional state-related costs such as site restoration. Tr. 2/12/13, Vol. I, at 63 (Cloutier); tr. 6/17/13, Vol. I, at 76-77 (Cloutier).

214. A decommissioning-cost analysis is prepared to evaluate and capture the costs to decontaminate and dismantle a nuclear facility, under one or more scenarios, for the purpose of establishing the revenue requirements to complete such scenario(s). Cloutier pf. at 4.

215. A decommissioning scenario is typically based upon one or a combination of two of the NRC's approved decommissioning alternatives: DECON (prompt decommissioning) or SAFSTOR (deferred decommissioning). Cloutier pf. at 5.

216. TLG Services ("TLG"), an affiliate of ENVY and ENO, has prepared decommissioning cost analyses for the VY Station that it states follow standardized and industry-accepted processes and practices. Cloutier pf. at 2 and 5.

217. TLG does analyses for most of the utilities in the United States and a good number of nuclear facilities across the world. Tr. 2/12/13, Vol. I, at 43 (Cloutier).

218. TLG's analysis evaluated both prompt (DECON) and deferred (SAFSTOR) decommissioning alternatives. Cloutier pf. at 6.

219. The TLG analysis includes some costs for site restoration. Exh. EN-TLG-2 at xvi; Cloutier pf. at 10.

220. Site restoration costs and activities are not governed by NRC regulations, as they come after license termination and are outside the scope of the NRC definition of decommissioning. Exh. EN-TLG-2, Section 2 at 15; exh. PSD-CROSS-WC-15 at 10; tr. 6/17/13, Vol. I, at 14 (Cloutier).

221. Absent other funding sources, funds will be available for site restoration or other non-radiological purposes only if there is a surplus in the decommissioning trust fund at the conclusion of radiological decommissioning and NRC license termination. Tr. 2/12/13, Vol. I, at 64-65 (Cloutier).

222. Should the Decommissioning Trust Fund be exhausted by radiological decommissioning, funds for site restoration would need to be taken from "other sources," such as parental guarantees. Tr. 2/12/13, Vol. II, at 19-20 (Cloutier).

223. In the Docket 6545 MOU, Entergy VY committed to fully restore the site of the VY Station. Exh. DPS-01 at 3.

224. If the VY Station had shut down in 2012, there were not sufficient funds in the decommissioning trust to allow prompt decommissioning. Tr. 2/12/13, Vol. I, at 45 (Cloutier).

225. Since purchasing the VY Station, ENVY has maintained credit agreements and a parental guarantee from Entergy Corporation. Twomey pf. at 17; findings 78-85, above.

226. Entergy VY plans to fund the greenfielding of the VY Station through the Decommissioning Trust Funds. Entergy VY expects that there will be an adequate amount of money left over to allow Entergy VY to meet the site-restoration commitments that were established in the Docket 6545 MOU. Tr. 6/17/13, Vol. II, at 129-130 (Cloutier).

227. Pursuant to the Docket 6545 MOU, Entergy VY made various commitments. These commitments included to "report to the Board and to the Department the status of the decommissioning funds and the latest NRC calculation of such responsibility at the same time as such report is required by the NRC," to participate in public discussion on the adequacy of the decommissioning funds, to provide to the Department semi-annual reports regarding the status of the decommissioning fund, as reported to the fund managers, to update a site-specific decommissioning cost study at least once every five years, with the first study completed five years after the sale of the VY Station to Entergy, and to demonstrate at the time of each site-specific decommissioning cost study that "funding will be sufficient to accomplish decommissioning, including site restoration and spent fuel management." Exh. PSD-01 at 4-5.

228. Under Paragraph 6 of the Docket 6545 MOU, Entergy VY must update its decommissioning-cost estimate every five years. Tr. 6/17/13, Vol. II, at 22 (Cloutier).

229. Pursuant to its obligations under the Docket 6545 MOU, Entergy VY's affiliate, TLG, completed a decommissioning cost analysis in 2011. Exh. EN-TLG-2 at vii; tr. 2/12/13, Vol. I, at 45 (Cloutier); Cloutier pf. at 4.

230. The MOU provides additional assurance that Entergy VY will have sufficient funds to complete site restoration. Tr. 1/31/14 at 61, 63 (Twomey).

231. Prior to executing the MOU in this proceeding, Entergy VY had not identified any money or account specifically dedicated to fund site restoration. Tr. 2/12/13, Vol. I, at 67 (Cloutier); tr. 2/15/13, Vol. II, at 93-94 (Twomey).

232. Prior to executing the MOU, Entergy VY indicated it would make available for site restoration only any surplus amount that might remain in the nuclear Decommissioning Trust Fund after completing radiological decommissioning. Exh. PSD-12 at ¶ 3; tr. 2/12/13, Vol. I, at 64-65 (Cloutier).

233. In the MOU in this proceeding, Entergy VY has agreed to establish a fund dedicated to site restoration at the VY Station ("Site Restoration Fund"). Under the MOU, Entergy VY will contribute \$10 million in cash or other equivalent financial instrument upon issuance of a CPG and \$5 million on December 31 of each of the next three years. Exh. Joint-1 at 3-4; Recchia pf. at 2-3; Twomey supp. pf. at 18.

234. Entergy VY also commits to provide financial assurance, in the form of a parental guarantee from Entergy Corporation, in the amount of \$20 million for the Site Restoration Fund, except that Entergy Corporation's obligation only occurs after the existing Entergy Corporation guarantee is terminated. Entergy VY also may eliminate the guarantee if the balance in the Site Restoration Fund exceeds \$60 million. Exh. Joint-1 at 4; tr. 1/31/14 at 110 (Twomey).

235. If a CPG is issued and the MOU approved, Entergy VY has committed to decommission the VY Station once the Company reasonably determines that the funds in the Decommissioning Trust Fund are sufficient to complete radiological decontamination and dismantlement and remaining SNF management activities that the federal government has not yet agreed (or been ordered) to reimburse. Tr. 1/31/14 at 33-34 (Twomey); Twomey supp. pf. at 17-18; exh. Board-20 at 4.

236. If the Decommissioning Trust Fund continues growing at its historical rate, the fund could reach the \$1.16 billion amount estimated by TLG Services (for a 2012 shutdown) as necessary to finance radiological decommissioning and SNF management at the VY Station in under 15 years. Tr. 1/31/14 at 142 (Twomey); Cloutier pf. at 7; exh EN-TLG-2, Section 3, at 24-25.

237. Although Entergy VY has agreed to commence radiological decommissioning as soon as the monies in the Decommissioning Trust Fund are sufficient for radiological decommissioning and SNF management, even after Entergy VY begins such decommissioning, it will not immediately spend the entirety of the fund, but plans to spend it as needed to finance

decommissioning tasks. The remaining funds in the Decommissioning Trust Fund are expected to continue to grow. Tr. 1/31/14 at 142 (Twomey); tr. 1/30/14 at 67-68 (Recchia).

238. Entergy VY has made plans to finance the remaining conditions in the MOU, even after the VY Station ceases operation. Tr. 1/31/14 at 58 (Twomey).

Discussion

At the present time, Entergy VY seeks permission to continue operating the VY Station through the end of this year. However, following closure of the VY Station, Entergy VY must decommission the Plant, as required by NRC regulations. This entails removal of SNF, initially to dry casks and eventually to a federal repository for such waste. Following removal of the fuel, the remaining structures are removed and the site is restored.

Many aspects of this process relate to radiological safety and therefore are strictly under the purview of the NRC as a matter of federal law. These aspects include issues concerning the SNF, the standards for radiological decontamination, and, significantly, the timing of the decommissioning. NRC rules allow a nuclear plant owner a substantial amount of time to complete the decommissioning process (up to 60 years). However, the standards and performance of site restoration remains within the state's jurisdiction.

At the time the VY Station was sold to Entergy VY, the owners had established a Decommissioning Trust Fund to finance the radiological decommissioning. As a part of the sale, that fund, along with risks associated with the fund adequacy, was transferred to ENVY. However, the Department also negotiated provisions in the Docket 6545 MOU that required Entergy VY to restore the site of the VY Station. The Board imposed further conditions, requiring that Entergy VY return all excess funds in the Decommissioning Trust Fund following site restoration. This latter provision was added to remove any incentive Entergy VY might have otherwise had to save money (with the expectation of keeping it), thereby encouraging maximum expenditure of these funds on site restoration.⁹³

93. This provision was subsequently modified to allow Entergy VY to retain half of any excess funds to the extent they were associated with added contributions to the Fund and earnings thereon. Docket 6545, Orders of 7/11/02 at 6-11 and 7/15/02.

In this proceeding, parties have raised concerns about the assurance of whether there will be sufficient funds available to completely restore the Vernon site. They have also disputed the site restoration standard that Entergy VY must meet. Entergy VY anticipates there will be sufficient excess funds in the Decommissioning Trust Fund after NRC requirements are met to fully accomplish site restoration. Entergy VY also maintains that the MOU provides several layers of protection that ensure that Entergy VY will be able to fully restore the site. The MOU establishes a separate fund for site restoration. This fund, which supplements any excess Decommissioning Trust Fund assets, is further supported by a parental guarantee. In addition, Entergy VY and the Department have agreed on a methodology to clarify the scope of site restoration obligations.

The Department originally raised substantial concerns over the adequacy of funds to complete site restoration. In the MOU, however, the Department and Entergy VY reached a number of agreements that, according to the Department, help to address their concerns. Like Entergy VY, the Department cites to the establishment of the Site Restoration Fund, supplemented by the Entergy Corporation guarantee as helping to ensure that funds will be available. The Department also highlights Entergy VY's agreement to a process for defining site restoration standards as a positive element. As a result, the Department contends that Entergy VY has adequately addressed issues associated with site restoration.

VPIRG maintains that the MOU significantly backtracks from previous Department positions. VPIRG cites to the Department's briefs earlier in this proceeding and asserts that the MOU does not provide sufficient assurances to address the concerns raised earlier by the Department. Moreover, VPIRG argues that the site restoration standards are "vague and unenforceable" and, more importantly, represent a departure from prior Board standards for nonradiological decommissioning. Finally, VPIRG asserts that Entergy VY's commitment to commence decommissioning as soon as funds are available is unenforceable. According to VPIRG, the Settlement Agreement needlessly leaves the decision on starting decommissioning to Entergy VY, without setting any objective criteria for enforcement.

CLF and NEC also maintain that commitments related to site restoration and timing of decommissioning are vague.

WRC raises a number of decommissioning/site restoration concerns. WRC questions whether the Decommissioning Trust Fund is adequate to permit Entergy VY from meeting all of its commitments. WRC also comments on various aspects of the decommissioning process, including the timing of decommissioning and the need for prompt removal of SNF from the spent fuel pool. WRC further argues that the Board should impose a condition prohibiting any delay in site restoration after decommissioning. WRC recommends that the Board require that site restoration include the removal of all structures, not simply the first three feet underground as Entergy VY has assumed. Finally, WRC asks that the Board strike the provision from the Docket 6545 Order that allowed Entergy VY to retain half of any excess funds in the Decommissioning Trust Fund.

The Board shares a number of the concerns as to whether Entergy VY's original testimony demonstrated that it had sufficient funds to fully restore the site of the VY Station after closure and decommissioning. The Department's witnesses, in particular, delineated a number of uncertainties. In addition, the exact standards for site restoration have not been established, adding to the uncertainty about the ultimate costs. Entergy VY has provided a certain amount of financial assurance in the form of guarantees from affiliates and its parent corporation. Entergy VY also anticipates being able to use excess money in the Decommissioning Trust Fund to meet site restoration obligations, but it was unable to quantify this excess. In the absence of the MOU, these uncertainties might have caused the Board to conclude that Entergy VY had not demonstrated that it could meet its Docket 6545 MOU commitment to fully restore the VY Station site.

The MOU puts in place two commitments that largely address these issues. Under the MOU, Entergy VY and the Department have established a process for assessing at an early stage and more comprehensively the site restoration costs and tasks. Entergy VY will initially conduct a site assessment study. Afterwards, Entergy VY has agreed to work with the Department, ANR, and VDH to determine site restoration standards. The parties anticipate that the Board will conduct a proceeding, probably in 2015, to determine the standards that will apply. Entergy VY has also committed to commence site restoration, in accordance with these standards, "promptly" after completing radiological decommissioning.

This process will enable the Board and parties to determine early in the post-operational period what standards will apply when Entergy VY eventually decommissions the VY Station site and restores it. The certainty will enable Entergy VY to better understand its financial needs for site restoration. Entergy VY can then plan to ensure that funds are adequate at the time they are needed. It will also avoid future litigation at the time of actual site restoration that could lead to delays.

The MOU also contains provisions to address the adequacy of funds for site restoration. As noted, Entergy VY anticipates that there will be excess money in the Decommissioning Trust Fund after compliance with NRC requirements. The MOU adds further funds, specifically targeted towards site restoration. Entergy VY commits to provide \$10 million upon issuance of a CPG and \$15 million over the next several years, so that by the end of 2017, the site restoration fund will have \$25 million invested. This money is then expected to grow to provide a supplemental funding source. This fund is backstopped by a parental guarantee from Entergy Corporation to provide up to \$20 million of additional funds (which can be eliminated if the site restoration fund balance exceeds \$60 million).

We find that the MOU adequately addresses issues related to site restoration. Entergy VY has also made three other commitments that represent an enhancement from the status quo. First, Entergy VY's MOU agreement to promptly commence site restoration after the completion of radiological decommissioning will help ensure that the site is available for use as soon as feasible. Second, in the Settlement Agreement, Entergy VY has agreed to initiate decommissioning within 120 days after it "has made a reasonable determination" that it has sufficient funds to complete decommissioning and remaining SNF management obligations.⁹⁴ These agreements represent clear commitments to not unreasonably delay decommissioning and site restoration to the maximum 60-year period authorized by the NRC, but to instead return the site to other uses as soon as funds are adequate to do so. We therefore accept and rely upon them. Third, in the MOU, Entergy VY expressly acknowledges the State's jurisdiction over site restoration. We also observe that the Docket 6545 Order, as well as subsequent orders issued by the Board, contain conditions and specific commitments by Entergy VY concerning post-

94. Exh. Board-20 at 4.

operational matters, such as site restoration.⁹⁵ These requirements will remain in place.⁹⁶ For example, Entergy VY's commitments in connection with the Post Shutdown Decommissioning Activities Report to demonstrate the adequacy of funding and to provide "additional funds or other acceptable financial assurance to ensure funding will be sufficient to accomplish decommissioning, including site restoration and spent fuel management" in Docket 6545 would not be affected by a Board order approving the MOU.⁹⁷

WRC raised several issues related to the timing of decommissioning itself. As we discuss above, radiological decommissioning is outside the Board's jurisdiction, so we do not address these issues.

WRC also asks that the Board modify the provision in the Docket 6545 MOU that calls for sharing of excess decommissioning funds between Entergy VY and the previous owners of the VY Station. We observe first that WRC did not file a request for such amendment in Docket 6545, which would be the proper recourse.

Turning to the merits of WRC's argument, we start by observing that it appears not to reflect the Board's Orders in that Docket. In that proceeding, the Department and Entergy VY did agree to a provision under which excess funds after decommissioning and site restoration would be shared between Entergy VY and the sponsors of the VY Station (55 percent of which would have gone to customers of GMP and CVPS). In the Board's Order approving the sale and Docket 6545 MOU, the Board specifically excluded from approval that provision of the Docket 6545 MOU and required (as condition 4 of the sale Order), that upon completion of decommissioning, any property in the Decommissioning Trust Fund be distributed for the benefit of the sponsors of the VY Station (i.e., the previous owners). On reconsideration, the Board modified this requirement so that it only applied to contributions from ratepayers (and growth

95. For example, *see* findings 111 and 112 of the Docket 6545 Order, based on testimony of Entergy VY committing to make future demonstrations of the adequacy of funding to accomplish site restoration and to provide additional funds or financial assurances to ensure sufficient funds for site restoration. Docket 6545, Order of 6/13/02 at 85-86.

96. The MOU provides that "[e]xcept as expressly stated in this MOU, all other agreements, Board orders and MOUs . . . remain in full force and effect." Exh. Joint-1 at ¶ 17.

97. Docket 6545 MOU (3/2/02) at 5 (¶ 9). *See*, also, findings 111-113 in Docket 6545, Order of 6/13/02 at 84-85.

from those contributions).⁹⁸ This meant that the Decommissioning Trust Fund that was transferred to Entergy VY as part of the sale, which had been ratepayer funded, was subject to the requirement that all excess ratepayer funds be returned. To the extent Entergy VY made additional contributions, those contributions and growth attributable to them would be shared.⁹⁹ WRC has not demonstrated why we should alter this arrangement.

Finally, WRC asks that we decide now that all structures, including their foundations, must be removed as part of the site restoration process. In light of the site assessment and process described in the MOU for defining site restoration standards, we find it unnecessary to specify part of the standard now and, therefore, decline to adopt WRC's suggestion.

B. Benefits of MOU

In its brief, VPIRG raises several concerns about the MOU in addition to those that we have specifically addressed above. VPIRG asserts that the benefits of the MOU are modest and that overall, they provide less protection to the public than would a decision on the merits. VPIRG points to various issues related to the timing of decommissioning and site restoration; these are discussed in the previous section. Further, VPIRG contends that the right of first refusal on any sale of land adds little to the State's eminent domain power. VPIRG also questions whether the economic development payments represent an incremental benefit, since they could be ordered by the Board in any event. As a result of these concerns, VPIRG argues that the public would be better served by an enforceable commitment by Entergy VY to seek NRC approval of the commencement of decontamination and dismantlement 60 days after a request from the Department or the Governor.

In reaching our decision, we have weighed the considerations put forward by VPIRG. Nonetheless, we are unpersuaded by VPIRG's argument that the public would be better served by rejection of the MOU and adoption of the condition VPIRG puts forward.

We start with VPIRG's proposed alternative — a condition requiring Entergy VY to seek NRC approval for the commencement of decommissioning upon request. This proposal would

98. Docket 6545, Orders of 7/11/02 at 6-13 and 7/15/02.

99. It is our understanding that, to date, Entergy VY has not made any incremental contributions.

seem to give the State substantial discretion. However, it is not clear that it actually provides more than cosmetic benefits. The decision to commence decommissioning is ultimately reserved to the NRC, not to Entergy VY or the State of Vermont. Neither the State nor the Board, as an instrumentality of the State, can direct the timing. Thus, even if the Board adopted VPIRG's suggested condition and Entergy VY made the request, if insufficient funds existed at that time, the NRC is unlikely to authorize decommissioning thus mooted the request. Moreover, it is not clear whether such a condition would be preempted, as it may intrude into radiological decommissioning.

By contrast, under the Settlement Agreement, Entergy VY has committed to seek NRC authorization within one hundred twenty days after it has made a reasonable determination that the funds in the Decommissioning Trust Fund are adequate to complete decommissioning and remaining SNF management activities.¹⁰⁰ This commitment achieves the same result as VPIRG seeks and has the benefit of Entergy VY having agreed to it.

We also conclude that although some of the provisions in the MOU may not individually have significant value, the MOU benefits in the aggregate will be substantial for the State of Vermont, and these benefits may well not have been obtainable through a litigated decision. This Order describes at length the benefits that the MOU facilitates, particularly relative to Entergy VY's original petition. We need not repeat them in detail, but they include various financial commitments relative to site restoration, clean energy development, and economic development in Windham County, and the establishment of a process for defining site restoration obligations. These benefits and the achievement of an agreement between Entergy VY and the State agencies on these and other matters are significant. Entergy VY's agreement to the conditions in the MOU and its assurances as to the availability of funding to meet its commitments under the MOU will provide more certain benefits than any realistic alternative.

It is also not clear that all of these benefits could have been obtained in the absence of the MOU. Entergy VY had contested proposals from the Department concerning the CEDF and

100. Exh. Board-20 at 4.

economic development in Windham County.¹⁰¹ Given the MOU, the Board does not need to resolve these issues. These arguments, however, highlight that if the Board were to attempt to order such relief, such an order might have led to more litigation with an uncertain outcome. The MOU secures benefits to be realized through Entergy VY's commitments without further litigation risk and thus is preferable as a means of promoting the general good of the State.

We do not agree with VPIRG's dismissal of the MOU as providing only modest benefits.¹⁰² This characterization misses the real questions — whether the MOU promotes the general good of the State and whether it provides benefits, be they "modest" or "material." The MOU does not purport to resolve post-operational issues, such as site restoration timing, funding and standards. Also, as VPIRG suggests, it is possible that portions of the MOU do not clearly provide benefits that are material to the State. For example, the value of the right of first refusal on the sale of the VY Station site may not be significant (although VPIRG has not established that the State could acquire the property through eminent domain). No party has presented evidence quantifying the potential value of the right-of-first-refusal. Nonetheless, this MOU provision clearly creates an opportunity that is of value to the State — one that did not exist before the MOU was negotiated. More broadly, the MOU significantly advances the resolution of numerous issues and therefore provides direct and valuable financial contributions to the general good of the State.

The evidence, especially when seen in light of the benefits to the State provided by the MOU, supports the conclusion that the continued operation through the end of the current operating cycle as part of an orderly wind-down of operations at the VY Station is substantially more beneficial to the State than the negative effects of this brief period of continued operation. Finally, no party, including VPIRG, has presented sufficient evidence that denying the CPG would be a better outcome for the State than that provided by approval of the MOU. As the Department states in its final brief, "the MOU provides benefits and certainty that conditions imposed by the Board *sua sponte* might not."¹⁰³

101. Entergy VY Supplemental Brief (11/22/13) at 12 and 16-19.

102. VPIRG's Final Brief (2/24/14) at 7-15.

103. DPS final brief (2/14/14) at 1.

VI. CONCLUSION

After carefully considering the positions of all the parties, we find that approval of the MOU will not only promote the general good of the State, but, is also the best option for the State under the circumstances. Accordingly, based on the foregoing, we find that Entergy VY's ownership and operation of the VY Station through the end of this year, in accordance with the terms of the MOU, will promote the general good of the State. In reaching this conclusion, we have relied upon Entergy VY's commitments in the MOU and our expectation that the Company will fulfill them.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Amendment of the Certificate of Public Good issued in Docket 6545, held by Entergy Nuclear Vermont Yankee, LLC ("ENVY"), and Entergy Nuclear Operations, Inc. ("ENO") (ENVY and ENO are jointly referred to as "Entergy VY"), to authorize the ownership and operation of the Vermont Yankee Nuclear Power Station (the "VY Station") to include the period of March 21, 2012, through December 31, 2014, and the continued ownership of the VY Station thereafter solely for the purpose of decommissioning, will promote the general good of the State in accordance with 30 V.S.A. § 231(a), and we hereby so amend these companies' Certificate of Public Good.

2. Condition 4 of the Public Service Board's April 26, 2006, Order in Docket 7082, which states:

The cumulative total amount of spent nuclear fuel stored at Vermont Yankee is limited to the amount derived from the operation of the facility up to, but not beyond, the end of the current operating license, March 21, 2012. This capacity may include on-site storage capacity to accommodate full core offload or any order or requirement of the Nuclear Regulatory Commission with respect to the fuel derived from these operations.

shall no longer apply. Condition 3 of the Certificate of Public Good issued to Entergy VY in that Docket on the same date and containing the same language shall no longer apply.

3. The Memorandum of Understanding ("MOU") among Entergy VY, the Vermont Department of Public Service, and the Vermont Agency of Natural Resources dated December 23, 2013, is hereby approved and the terms of the MOU are hereby incorporated as terms of this Order. Entergy VY shall comply with each of the provisions of the MOU (which is attached to, and incorporated into, this Order as Attachment B).

4. Without affecting any of Entergy VY's other obligations (including, but not limited to, its current and future obligations under condition 12 of the Public Service Board's Order of June 13, 2002, in Docket 6545, and Condition 5 of the CPG issued on the same date in Docket 6545), the requirement that Entergy VY submit a report by June 13, 2014, related to post-shutdown activities at the VY Station is waived.

Dated at Montpelier, Vermont, this 28th day of March, 2014.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: March 28, 2014

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.

Attachment A: Appearances

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