

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Joint Petition of NorthStar Decommissioning)
Holdings, LLC, NorthStar Nuclear)
Decommissioning Company, LLC, NorthStar)
Group Services, Inc., LVI Parent Corp.,)
NorthStar Group Holdings, LLC, Entergy) August 30, 2017
Nuclear Vermont Investment Company, LLC,)
and Entergy Nuclear Operations, Inc., and any) PUC Docket No.8880
other necessary affiliated entities to transfer)
ownership of Entergy Nuclear Vermont Yankee,)
LLC and for certain ancillary approvals,)
pursuant to 30 V.S.A. §§ 107, 231, and 232)

SUMMARY OF TESTIMONY OF RICH HOLSCHUH
ON BEHALF OF ELNU ABENAKI

Mr. Holschuh's testimony addresses the cultural significance of the VY site to the Elnu Abenaki and summarizes the degree to which these interests have been taken into consideration in past project proposals and deliberative proceedings, setting a baseline for the current docket. He then outlines existing applicable Federal and State standards, and recommends procedures that would help to ensure sensitivity to indigenous cultural concerns, and meet compliance with regulatory guidelines in the docket at hand. Lastly, he offers commentary on the standards to be put in place during the proposed decommissioning and site restoration.

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PREFILED TESTIMONY OF RICH HOLSCHUH
ON BEHALF OF ELNU ABENAKI

1 Q1. Please state your name, your position, and whom you represent.

2

3 A1. My name is Rich Holschuh. I am a public liaison for the Elnu Abenaki
4 Tribe, a Vermont State Recognized Native American Indian Tribe under
5 Sec. 1. 1 V.S.A. § 853a. I serve at their behest, and under the guidance
6 of Tribal leadership, on the Vermont Commission for Native American
7 Affairs. The intervenor action of Elnu Abenaki in Docket 8880 is supported
8 by two other Vermont State Recognized Tribes, the Nulhegan Band of the
9 Coosuk Abenaki and the Koasek Traditional Band of the Koas Abenaki.

10

11 Q2. Describe your background and your work relative to this proceeding.

1 A2. I am a Windham County resident (Wantastegok/Brattleboro, VT) of
2 Mi'kmak heritage and an indigenous cultural researcher. I serve as a
3 public liaison and spokesperson with governmental agencies of oversight
4 such as the Federal Energy Regulatory Commission (FERC), the Nuclear
5 Regulatory Commission (NRC), and the Vermont State Department of
6 Historic Preservation (DHP). I also interface with corporate entities,
7 representing tribal interests in licensing and operation procedures, other
8 local and state governmental entities, civic groups, public and private
9 educational institutions, and other tribal groups.

10

11 Q3. Have you previously provided testimony to the Vermont Public Utility
12 Commission (PUC) or related commissions?

13

14 A3. No, I have not. But, anticipatory to the PUC Docket 8880 proceeding,
15 I have participated in several Vermont Nuclear Decommissioning Citizens
16 Advisory Panel (VTNDCAP) meetings, including the NRC's public hearing
17 on May 25, 2017, relative to their own review of the proposed Vermont
18 Yankee (VY) change of ownership for decommissioning.

19

20 Q4. What is the purpose of your testimony?

21

1 A4. The purpose of my testimony is to describe the traditional - and
2 continual - cultural and spiritual significance of the VY site and setting to
3 the Elnu Abenaki. I will also summarize the degree to which these
4 implications have been taken into consideration in past project proposals
5 and deliberative proceedings. I will outline existing applicable Federal and
6 State standards, and recommend procedures that would help to ensure
7 both acknowledgement of and sensitivity to indigenous cultural and
8 spiritual concerns, and compliance with regulatory guidelines, in the
9 current proceedings. Lastly, I will offer commentary on the standards to
10 be put in place in the Commission's Findings of Fact and Orders.
11 anticipatory to the proposed decommissioning and site restoration.

12

13 Q5. Who are the Elnu Abenaki?

14

15 A5. The Elnu Abenaki (Elnu) are a Vermont State-recognized Tribe (2011)
16 comprised of descendants and family members of the indigenous
17 [Western] Abenaki people, a group within the larger Wabanaki grouping,
18 historically known as the Wabanaki Confederacy. The Elnu are
19 headquartered in Jamaica, Windham County, VT; they are the
20 southernmost of the four current State-recognized Tribes, and headed by
21 Sôgmô (Chief) Roger Longtoe Sheehan. Generally speaking, the Western

1 Abenaki homeland, called n'dakinna (loosely, "our land"), comprises parts
2 of what are now known as Vermont, New Hampshire, northern
3 Massachusetts, southern Maine, and southern Quebec. Within this broad
4 area are various riverine-centric regions more closely attributed to
5 particular family-oriented bands, often identified by their geographical
6 associations such as Pennacook, Koasek, Mazipskoik, and, in the locality
7 under review, Sokwakik. It is a critical understanding that as an
8 indigenous population, the People understand themselves to be one
9 inseparable entity with the landscape and with all of its other presences.
10 Sokwakik itself is centered on the mid-Connecticut River valley and its
11 tributary watersheds, loosely described as north from
12 Peskeompskut/Turners Falls, through Wantastegok/Brattleboro and Kchi
13 Pontekw/Bellows Falls, and continuing upstream toward Koasek
14 (Newbury/Haverhill area). Vernon and the VY site are in the heart of
15 Sokwakik.

16
17 Q6. What is the pre- and immediate post-contact historical context of the
18 VY site and immediate environs for the Elnu Abenaki?

19
20 A6. The area of Great Bend in Vernon, VT and Hinsdale, NH, where the
21 Connecticut River makes a broad turn at Coopers Point almost back upon

1 itself, is the site of today's Vernon hydroelectric dam. It creates the
2 Vernon pool, which in turn acts as the cooling water reservoir for the
3 Vermont Yankee nuclear power plant, just upstream and adjacent on the
4 west (VT) bank of the River. Where the Vernon dam now stands was an
5 ancient fishing ground at Coopers Rock, the beginning of a 12-mile
6 stretch upstream of swift water, where migrating fish such as salmon,
7 shad, sturgeon, herring, and eels were harvested. Agricultural fields and
8 gardens were planted on the rich, alluvial plains of the interval meadows,
9 with in-ground storage silos further uphill at the edge of the rising
10 terraces, and dwellings close above. Wetlands at the river's edge and
11 upland forests provided food, medicine, and materials for everyday living.
12 All of these together created the cosmological setting within which
13 spiritual practice and ceremony were observed. Today's Governor Hunt
14 Road traces the trail that connected the settlement areas up- and
15 downstream. Directly across the river in Hinsdale, within sight, is the
16 well-documented location of the 1663 Sokoki Abenaki palisaded village
17 known as Fort Hill, built to shelter the area's residents from imminent
18 Iroquois attack. Dozens are known to have died there in two successfully
19 repelled offensives in the winter of that year. With regard to the
20 subsequent arrival of Europeans, it is an aphorism that the best situated
21 and most easily worked lands were the first occupied by the colonizers.

1 This is true in Vernon's case, as well: in the 1730-40's, the first settled
2 area was the stretch of fertile meadow just below the dam (Stebbins
3 Road area) to just above the VY plant (Forts Sartwell and Bridgman). Fort
4 Dummer was strategically placed upstream in 1724, north just over the
5 current Vernon town line near Broad Brook, to facilitate this and protect
6 the other colonizing settlements further south. The simple reason these
7 places were noted by land speculators and ensuing settlers as most
8 desirable (and vigorously contested) is that these lands were already
9 worked and occupied by the indigenous people. Subsequent area uses by
10 British and, later, Vermont and American occupants were primarily
11 agricultural, light industrial, mercantile, and residential.

12

13 Q7. What is the current physical disposition of the VY plant landscape
14 relative to past uses, in this context?

15

16 A7. With the building of the Vernon hydroelectric dam in 1909 and the
17 impounding of the Connecticut River, the average level of the resultant
18 pool was raised 30 feet. Many hundreds of acres were flooded, including
19 much of the fertile bottomland meadows, areas that had been used for
20 subsistence and cultural activities for thousands of years. For example,
21 the sacred ceremonial petroglyph site at the confluence of the West River

1 7 miles upstream (one of only two such primary sites in Vermont's
2 borders) is now submerged and hidden. We may never know the sum of
3 what has been lost. Notwithstanding, many other usage areas in the VY
4 plant vicinity are, of course, still above the river surface; an appreciable
5 number of these, including burials, encampments, activity areas, and
6 settlements, are documented in the Vermont Archaeological Inventory
7 (VAI) and its New Hampshire equivalent. The VAI records are kept strictly
8 confidential because of the constant threat of disturbance by looters and
9 collectors, but are accessible by qualified professionals for research and
10 to flag possible impacts by proposed development. From the VT
11 Department of Historic Preservation (DHP) webpage, note: "Data is
12 entered regularly into the VAI. Yet, the VAI is not an all-inclusive record
13 of Vermont's archaeological sites. Many of Vermont's sites have not been
14 documented and most have yet to be discovered."

15

16 Q8. What is the current cultural significance of the VY site and immediate
17 environs to the Elnu Abenaki?

18

19 A8. In order to create a relevant context, it is important to situate this
20 question within traditional Abenaki cultural understandings. I will explain.
21 There is an underlying sense in which all things are seen as being part of

1 a whole (Creation), in multiple dynamic relationships, and time itself is a
2 continuum or a whole, not linear. The past and future are present now,
3 and there is a constant flow between entities. In other words, all things
4 are connected and always have been/will be. A key concept is maintaining
5 balance – this is accomplished by maintaining proper relationships
6 through traditional spiritual practice. It is built into everyday life – it is a
7 way of being, it is a responsibility. Consequently, in a given place such as
8 the VY site at Great Bend, the presence of all of the ancestors, their
9 actions, their dispositions, their dreams are considered to be still
10 relevant, to be taken into consideration. What has happened cannot be
11 undone (for it is still here) but it must and can be reckoned with – this
12 should be done in the best manner possible. Certainly, special care should
13 be taken for the continued well-being of the dead, just as most cultures
14 enjoin. These traditional practices are based on the concept of natural
15 law, the way things are meant to be, the way it has always been.
16 Everything has its place, its role, a relationship to everything else. This is
17 not a static system though - within this framework, there is constant
18 change, mutability, shifting... this is where the concept of balance is
19 critical. But now, at VY, we have some new, strange things, things that
20 have never been here before. Things that we can't see although they are
21 very real. There are now radionuclides that are not a part of natural law,

1 that have never been present, that are antithetical to life itself. They
2 don't fit - they aren't a part of the story. But yet, here they are. Someone
3 made a decision to step outside of relationship and now we have to live
4 with this great incongruity. Realistically, this is where we find ourselves:
5 with a despoiled and poisoned presence upon an ancient and abundant
6 landscape.

7

8 Q9. How are these traditional cultural beliefs recognized, applied, and
9 protected under current Federal and State law?

10

11 A9. These traditional cultural beliefs and practices have standing in
12 Federal law under the American Indian Religious Freedom Act (AIRFA),
13 the National Historic Preservation Act (NHPA) Section 106 (Historic
14 Properties of Religious and Cultural Significance to an Indian Tribe), the
15 National Register Bulletin 38 (NRB38) for Traditional Cultural Properties,
16 and the Native American Graves Protection and Repatriation Act. Under
17 these regulations and guidelines, when a proposal is made that involves
18 Federal funding, regulation, or other oversight, the interests and rights of
19 Native Peoples must be taken into consideration through consultation and
20 incorporated into planning and implementation measures. The individual

1 State Historic Preservation Officers (SHPOs) are a part of this oversight
2 and consultation process.

3 On a State regulatory basis, the Vermont has several statutes, which
4 outline responsibilities and procedures for cultural resources, typically
5 administered through the Department for Historic Preservation (DHP).

6 They include the PUC's own Section 248 (Title 30) Criterion 8 procedure
7 for evaluating the effects of a proposal in order to issue a Certificate of
8 Public Good, the Vermont Historic Preservation Act (Title 22 VSA Chapter

9 14), and Act 250, also under Criterion 8 (Title 10 VSA Chapter 151). The

10 State is also involved in jurisdictional oversight of NHPA Section 106,

11 NRB38, the National Environmental Policy Act (NEPA), and specific rules

12 addressing the disturbance of unmarked burials, a characteristic of nearly

13 all indigenous gravesites. From the DHP webpage: "Native American and

14 Euro-American burial grounds are sacred places. Unfortunately, virtually

15 all Native American burial grounds are unmarked and undiscovered."

16

17 Q10. Relative to these requirements, what degrees of oversight been

18 applied to the Vernon site over the full term of VY's planning,

19 construction, and operation, previous to this proceeding?

20

1 A10. With the exception of several VY auxiliary facility projects (well into
2 the plants operating history) that required permit amendments (and
3 included fragmentary cultural resource reports), there has never been a
4 comprehensive site assessment for VY. The cultural significance of this
5 site has never been fully acknowledged, although its great potential is
6 conceded. The original 1972 Atomic Energy Commission license for the
7 plant makes that fact clearly, stating, "No formal archaeological survey
8 was conducted at the Vermont Yankee Nuclear Power Station prior to
9 initial construction." And yet, for example, multiple historic newspaper
10 accounts record the unearthing of disparate indigenous burials in the
11 immediate area (in all directions) in the two centuries before the building
12 of the facility. This is not at all surprising and is, in fact, to be expected
13 when it is known that indigenous cultural burial practices exhibit
14 preferences for the well-drained soils of terrace edges and riverbanks,
15 and knolls overlooking significant cultural or ceremonial sites such as
16 fishing grounds. The official past VY record acknowledging and
17 documenting indigenous presence is incomplete, cursory, and in fact
18 dismissive. The 2017 Revised VY Post Shutdown Decommissioning
19 Activities Report (PSDAR, Page 18) simply refers to the previous 2014
20 PSDAR (page 31), which again, reiterates the NRC's own 2007 SEIS
21 (NUREG-1437 Supplement 30, Pages 2-83 to 2-86), repeating in circular

1 logic "...no known sites of significance to Native Americans have been
2 identified at the VYNPS site." I will make two comments: Sites cannot be
3 identified if they are never carefully (or only partially) considered, and,
4 "significance to Native Americans" cannot be ascribed except by those
5 same "Native Americans" – a paid consultant does not exercise that full
6 prerogative.

7

8 Q11. Above and beyond traditional cultural considerations, as already
9 outlined, what is the professional estimation of the likelihood of
10 indigenous cultural resources at the VY site?

11

12 A11. Quoting from the 2007 SEIS, "There is potential for *intact* (italics
13 mine) archaeological deposits within the undeveloped areas of the VYNPS
14 site. The VYNPS is located on the floodplain [i.e. glacial and riverine
15 alluvium] of the Connecticut River. As a result, there is the potential for
16 deeply buried archaeological material." Human presence in this area has
17 been documented thus far to 11,000 years BPE (Before Present Era). The
18 partial-survey reports conducted for the previously cited small VY facility
19 projects state a similar premise, in that the acknowledged site potential is
20 high. This is demonstrated by a quick rating of the area using the VT
21 DHP's Environmental Predictive Model for Locating Pre-contact

1 Archaeological Sites: it yields a score of about 130, where 0-31 is
2 considered archaeologically non-sensitive, and anything above that
3 denotes increases in sensitivity. Needless to say, the VY site rates as
4 extremely sensitive. Further, the misleading binary characterization of
5 *intact vs disturbed* deposits is employed in all existing reports, typically
6 used to excuse investigation and to further reinforce, with circular logic,
7 that "...no known [intact] sites of significance to Native Americans have
8 been identified..." Add to this the admission from the 2007 SEIS that "A
9 considerable amount of the site was disturbed during construction. Aerial
10 photographs from construction are the only evidence of the extent of the
11 disturbance." It becomes abundantly clear that no one really knows what
12 has been disturbed, exactly where, to what extent, and certainly not
13 whether those disturbed areas do, in fact, still contain significant cultural
14 resources, much less human remains. The stigmatization of "disturbed
15 deposits" as not significant, and disqualified from consideration, must be
16 recognized in light of the indigenous understanding that those ancestors
17 are *still here*, albeit perhaps not resting in peace. One further distinction
18 that must be drawn is the narrow reliance on (literally) hard evidence,
19 completely disregarding the predominance of biodegradable materiality
20 employed in indigenous lifeways. Cognitive biases such as these can omit,

1 restrict, or devalue the information available when making decisions;
2 these assumptions can be discriminatory in their effect.

3 In summation, given the high environmental sensitivity by professional
4 estimation, in combination with the traditional cultural understandings
5 that this area has an ongoing intrinsic high value, it is a dereliction of
6 obligation to rely solely on past ignorance, omission, and dismissals.

7

8 Q12. If the project proposal was to proceed with the VY plant transfer,
9 decommissioning, and associated site reclamation, what should be done,
10 going forward, to recognize the shortcomings of past operations and
11 come into compliance with existing guidelines and honor the traditional
12 cultural responsibilities of the Elnu Abenaki?

13

14 A12. Our concern is for the earth, the soil of our homeland, that of our
15 ancestors, and all of our relations. We are the Land, and the Land is us.
16 The River itself is the heart of the People – Water is Life – and all of these
17 things should be treated with respect. The proposed actions for
18 decommissioning and the concomitant and/or subsequent site restoration
19 will involve massive amounts of soil excavation, removal, redistribution,
20 and regrading, with impacts on ground and surface waters, as well as air
21 quality. All topography on the site will be subjected to some level of

1 scrutiny and, for the most part, some level of remediation or
2 rehabilitation. Additional substantial areas for staging and storage will be
3 utilized, some of them perhaps offsite. In a phrase, the decommissioning
4 of VY has been characterized as "the largest industrial undertaking that
5 has ever been undertaken in the State of Vermont," given that this time –
6 as contrasted with its construction – we are dealing with nuclear
7 contamination.

8

9 We request that a comprehensive Memorandum of Agreement be
10 formulated by the Petitioners in joint consultation with Elnu Abenaki, their
11 allies, and agents, prioritizing cultural resource awareness and
12 incorporating traditional sensitivities. Tribal participation is paramount.
13 We request that properly qualified personnel accountable to such policies
14 be put in place for oversight of *all* earth-disturbing activities, with regular
15 direct consultation and reporting. We register our concern that some of
16 these earth disturbances may already be underway, in an exploratory
17 manner, without any accountability. We request that all applicable
18 Federal and State statutes and regulations as cited earlier be followed
19 faithfully from this point forward, in addition to any others that agencies
20 of oversight may require, again in full and regular consultation with Elnu
21 Abenaki, their allies, and agents. We request that we be integrally

1 involved in helping to determine the site's ultimate restoration standards,
2 in order that they be sensitive and respectful of our concerns. We are
3 available to work out the requirements and implementation of these
4 programs. Our goal is to create a dynamic, responsive collaboration that
5 will result in a fuller and more respectful acknowledgement of the
6 presences that are here, and how they have been impacted by past
7 attitudes and activities. Our responsibility is to restore what balance we
8 can, and to steward this place in the best manner possible.

9

10 Q13. Looking ahead, what would you envision as the best use for the site
11 after complete restoration?

12

13 A13. The requirements for site cleanup and restoration have not yet been
14 set. We request that we be incorporated into any planning and
15 implementation process that is undertaken. We hope they will be set to
16 as high a standard as possible, at least toward a "greenfields" model.

17 Given the environmental and spiritual trauma that has already enveloped
18 the landscape here, we feel it would be best to let the land lie at rest and
19 allow it to heal as much as possible. It should be a place where everyone
20 can remember, and listen and learn, and dream, and offer hope of a

1 better way for the next generations to be in this place. We welcome
2 others who would aspire to a similar healing and honoring process.

3

4 Q14. Does this conclude your testimony?

5

6 A14. Yes.