

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee, LLC, and)
Entergy Nuclear Operations, Inc., for amendment of)
their Certificates of Public Good and other approvals)
required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A.) Docket No. 7440
§§ 231(a), 248 & 254, for authority to continue after)
March 21, 2012, operation of the Vermont Yankee)
Nuclear Power Station, including the storage of)
spent-nuclear fuel)

MOTION SEEKING ISSUANCE OF A FINAL DECISION AND ORDER GRANTING CPG

By this motion, Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together, “Entergy VY”), ask that the Vermont Public Service Board (the “Board”) issue a final decision and order on Entergy VY’s petition in this docket, either amending the existing certificate of public good or issuing a new one to authorize operation of the Vermont Yankee Nuclear Power Station (“Vermont Yankee”) for twenty years after March 21, 2012 (“Continued Operation”). Entergy VY files this motion in light of the U.S. District Court’s Decision and Order on the Merits of Plaintiffs’ Complaint in *Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Operations, Inc. v. Shumlin et al*, Docket No. 1:11-cv-99 [attached and herein cited and referenced as the “District Court Decision”], issued on January 19, 2012.

MEMORANDUM

Vermont law, 30 V.S.A. § 248(e)(2), previously prevented this Board from approving Continued Operation. The Board accordingly declined to issue a decision even though the case has been fully litigated, with the last briefs filed on August 7, 2009. *See, e.g.*, Docket No. 7600, *Investigation into (1) whether Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., (collectively, “Entergy VY”), should be required to cease operations at the*

Vermont Yankee Nuclear Power Station, or take other ameliorative actions, pending completion of repairs to stop releases of radionuclides, radioactive materials, and, potentially, other non-radioactive materials into the environment; (2) whether good cause exists to modify or revoke the 30 V.S.A. § 231 Certificate of Public Good issued to Entergy VY; and (3) whether any penalties should be imposed on Entergy VY for any identified violations of Vermont statutes or Board orders related to the releases [hereafter referenced as “Docket 7600”], tr. 11/10/2010 at 44 (“The legislature says we can’t issue an order.”).

The District Court Decision invalidates Act No. 160, which had amended Section 248 of Title 30, Vermont Statutes Annotated, to require prior legislative approval before the Board could issue a decision with respect to Continued Operation. District Court Decision at 37-38, 78, 99-100. The District Court Decision severs this provision from Section 248 and frees the Board to act in this docket.

In this proceeding, the parties have litigated and the Board has before it substantial record evidence in all areas of its jurisdiction that are not preempted.¹ The District Court Decision narrows the scope of the Board’s jurisdiction, and the Board has a fully sufficient record, without taking any additional evidence, to issue a decision either amending the existing certificate of public good or issuing a new one to authorize operation of Vermont Yankee for twenty years after March 21, 2012. While the District Court Decision may be appealed, the permanent injunction issued by Judge Murtha will remain in place during the pendency of that appeal and will constitute the status quo. Fed. R. Civ. P. 62(a)(1), (c); Fed. R. App. P. 8.

Entergy VY can continue to operate Vermont Yankee after March 21, 2012, in accordance with Section 814(b) of Title 3, Vermont Statutes Annotated. But, as this case has

¹ Most of the parties in this docket have briefed extensively the non-preempted scope of the Board’s jurisdiction in Docket 7600.

been filed, litigated and fully briefed, all issues properly before the Board are ready to and should be decided (*see* V.R.C.P. 1; *In re: Kilburn*, 157 Vt. 456, 457 (1991) (judge should dispose promptly of the business of the court, citing Code of Judicial Conduct Canon 3A(5)). Vermont Yankee respectfully submits that its employees, investors, neighbors and the public at large would benefit from the clarity and certainty that would result from this Board's prompt decision based on the existing record. The District Court Decision provides clear guidance as to what areas of inquiry by the Board would be federally preempted as it completes this proceeding.

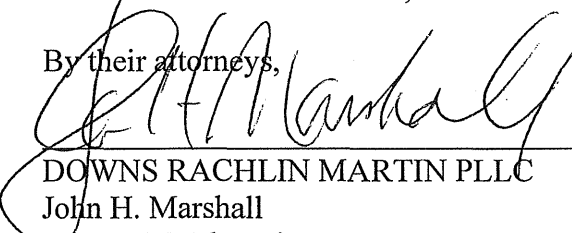
Accordingly, the Board should either amend the existing certificate of public good or issue a new one to authorize operation of Vermont Yankee for twenty years after March 21, 2012.

St. Johnsbury, Vermont. January 31, 2012.

Respectfully submitted,

ENTERGY NUCLEAR VERMONT
YANKEE, LLC, AND ENTERGY
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