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April 9, 2012

Mrs. Susan M. Hudson, Clerk  
Chittenden Bank Building  
Vermont Public Service Board  
112 State Street - Drawer 20  
Montpelier, VT 05620-2701

Re: Docket No. 7440

Dear Mrs. Hudson:

On March 16, 2012, the Department cross-moved for a declaratory ruling that “all aspects of the CPGs issued in Docket 6545, 6812 and 7082, including the obligations associated with those CPGs, remain in effect pending a final decision by this Board on Entergy’s pending application.” The Department’s motion, on which it requested briefing, was premised upon the straightforward notion that, to the extent Vermont Yankee’s operation expiration date reflected in its CPGs has been suspended pending resolution of the Board’s process, so too has the expiration date covering all obligations in those CPGs. In its April 3 response to the Department’s cross-motion, Entergy stated that “Entergy VY must comply with the conditions in the existing certificates of public good that the Department lists at pages 7-9 of its cross-motion.”

Included in the conditions listed by the Department were the following conditions:

- Continued payment of monies into the Clean Energy Development Fund (pursuant to the MOU), and
- Quarterly payments to the Clean Energy Development Fund of \$625,000.

DPS Cross-Motion at 8-9 (referencing conditions in the CPGs for Dockets 6812 and 7082, respectively).

Notwithstanding the representations of its counsel, an Entergy spokesperson recently responded to an article in the press stating that Entergy had agreed to comply with these commitments by stating that the article “got it wrong.”

<http://vtdigger.org/2012/04/04/business-groups-balk-at-tax-on-vermont-yankee/>



In addition, while Entergy made its payment for the monies due for calendar year 2011 under the Docket 6812 CPG on March 27, 2012, it has not made its quarterly payment of the \$625,000 due under the Docket 7082 CPG, which was due on April 1, 2012. It is clear that Entergy is attempting to limit the concessions it made in its April 3 response, and will argue that it need not fulfill these obligations during the pendency of Board proceedings because the MOUs expressly incorporated into the applicable CPGs contain expiration dates (in Docket 6812, requiring payments through calendar year 2012, due by March 31, 2013, and in Docket 7082 requiring payments through January 1, 2012). Entergy cannot have it both ways. While its operations expiration date is suspended, so too are all dates affecting Entergy's obligations under the CPGs.

The MOUs, as well as the CPGs and associated Orders in those dockets, were premised on the understanding that Entergy would need a new CPG following expiration of its operations CPG on March 21, 2012. The monetary payments were recognized as an essential component for the Board to grant Entergy permission to proceed with the uprate and to construct additional storage for spent nuclear fuel, respectively. All time limitations that were imposed in the MOUs and incorporated into the CPGs must be read in the context of the temporal limitations on Entergy's operations as they were understood at the time.

Since Entergy is permitted to continue to run the plant by operation of law despite time limitations, it must be prepared to comply with *all* of the conditions of those prior CPGs, despite any time limitations imposed within those CPGs. In order to ensure that the record is clear and a ruling is made, the Department asks that the Board grant the Department's cross-motion and specify that Entergy must comply with all of the obligations imposed by the CPGs including those with expiration dates tied to the end of operations such as the payments to the CEDF. Alternatively, Entergy should be required to set forth its position in a formal filing to which the Department and all other parties can respond.

Please call me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Beling", with a stylized, flowing script.

John Beling  
Director for Public Advocacy

cc: Attached Service List

PSB Docket No. 7440 - SERVICE LIST

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