

MEMORANDUM

To: Parties in PSB Docket No. 7440

From: Susan M. Hudson, Clerk of the Board

Re: Request for Comments on Procedural Issues

Date: February 22, 2012

The Public Service Board ("Board") has scheduled a prehearing conference for March 9, 2012, commencing at 9:30 a.m. Earlier, the Board requested comments by March 2, 2012, from parties on Motion Seeking Issuance of a Final Decision and Order Granting CPG filed by Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (together "Entergy VY"). The Board requests that parties' March 2 filings also respond to the following additional procedural issues.

1. What is the scope of review for Entergy's petition? Entergy originally petitioned under 30 V.S.A. §§ 231, 248, and 254 as well as 10 V.S.A. §§ 6501-6504. The District Court's Declaratory Judgment states that Act 160 is preempted, including the provisions of Sections 248(e)(2) and 254. However, the Permanent Injunction relates only to barring the state from enforcing Act 160 to compel Vermont Yankee to shut down due to failure to receive legislative approval.

(a) Under the language of Title 10, Chapter 157 (as modified by the District Court Order), does the Board have authority to grant Entergy VY's petition under that Chapter?

2. To what degree can the Board rely upon the existing record? In its comments, the New England Coalition observes that Entergy VY had taken the position before the District Court that the record in Docket 7440 was tainted and that it was necessary to start over in a new docket. Is this Entergy VY's position? If so, is it not essential that the Board start over to ensure that the record does not remain subject to challenge?

3. If the Board uses the existing record as a starting point, to what extent is it necessary to allow parties the opportunity to update the record?

(a) Are the economic analyses still valid or is it necessary to update them?
(b) What changes to the record are necessary based upon Entergy VY's

testimony that it subsequently acknowledged to be less than fully accurate? Do parties need an opportunity to respond to any changes that Entergy VY seeks to make to the record?

(c) Are further updates necessary to reflect intervening events (such as Entergy VY's challenge to Vermont law or the Nuclear Regulatory Commission's grant of a license extension)?

(d) Under 10 V.S.A. § 6522, "Any certificate of public good issued by the board shall limit the cumulative total amount of spent fuel stored at Vermont Yankee to the amount derived from the operation of the facility up to, but not beyond, March 21, 2012, the end of the current operating license." It appears that this provision, which was incorporated in the Docket 7082 CPG, has not been preempted by the District Court. Does the record contain evidence on how Entergy VY will comply with this requirement?

4. To what extent can Entergy VY operate past March 21, 2012?

(a) Does Entergy VY plan to operate past March 21, 2012, if the Board has not yet issued a CPG? If so, what does Entergy VY plan to do with spent fuel generated as a result of such operation?

(b) Is such operation barred by 10 V.S.A. § 6522(c)(5), which provides: "Compliance with the provisions of this subchapter shall not confer any expectation or entitlement to continued operation of Vermont Yankee following the expiration of its current operating license on March 21, 2012. Before the owners of the generation facility may operate the generation facility beyond that date, they must first obtain a certificate of public good from the public service board under Title 30."? Does this enactment take precedence over the general provisions of 3 V.S.A. § 814?

(c) The District Court Order observed that "The Board's order also expressly limited the total fuel that could be stored to amounts derived from operation through 2012, the end of the current operating license."¹ What effect, if any, does this have on Entergy's operation beyond March 21, 2012?

(d) How does the provision in 3 V.S.A. § 814 stating that an existing license does not expire while a timely and sufficient application for renewal is pending relate to these explicit commitments and orders? Specifically, do the Docket 6545 MOU and the Board's Orders (not the CPGs themselves) in Dockets 6545 and 6082 constitute "licenses" within the meaning of Section 814? In particular, the Board's June 13, 2002, Order in Docket 6545 states "Absent issuance of a new Certificate of Public Good or renewal of the Certificate of Public Good issued today, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. are prohibited from operating the Vermont Yankee Nuclear Power Station after March 21, 2012." In addition, the Docket 6545 MOU also contains Entergy's

1. The reference is to the Board's Dry Cask Order in Docket 7082.

agreement that "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*." (Emphasis added).

As the Board stated previously, in addition to normal filing, parties should file electronic copies with the Board (to psb.clerk@state.vt.us) in a format that permits searching and copying.