



State of Vermont
Department of Public Service
112 State Street
Montpelier, VT 05620-2601
TEL: 802-828-2811

FAX: 802-828-2342
TTY VT: 800-734-8390
email: vt dps@state.vt.us
<http://publicservice.vermont.gov/>

March 16, 2012


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

Re: Docket No. 7440

Dear Mrs. Hudson:

Enclosed for filing with the Public Service Board are an original and six copies of the Department of Public Service's Response to Entergy's Memorandum dated March 7, 2012, Response to Board Inquiries from Status Conference dated March 9, 2012, Response to Entergy's Motion for Declaratory Ruling, and Cross-Motion for Declaratory Ruling in the above-captioned docket.

Sincerely,


John Beling
Director for Public Advocacy

Enclosure

cc: Attached Service List



PSB Docket No. 7440 - SERVICE LIST

Parties:

John Beling, Esq. – Aaron Kisicki, Esq.
Vermont Department of Public Service
112 State Street
Montpelier VT 05620-2601

John H. Marshall, Esq. - Nancy S. Malmquist, Esq.
Peter D. Van Oot, Esq. - Robert A. Miller, Esq.
Downs Rachlin Martin, PLLC
90 Prospect Street - P.O. Box 99
St. Johnsbury, VT 05819-0099 (**Entergy**)

Kim F. Bykov Esq.
Senior Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601 (**Entergy**)

Robert B. Hemley, Esq. - Matthew B. Byrne, Esq.
Gravel and Shea, P.C.
76 St. Paul Street – 7th Floor
PO Box 369
Burlington, VT 054012-0369 (**Entergy**)

Judith L. Dillon, Esq.
Vermont Agency of Natural Resources
103 South Main Street
3rd Floor Center Building
Waterbury, Vermont 05671-0301 (**ANR**)

Kenneth C. Picton, Esq.
Dale A. Rocheleau, Esq.
Carolyn Browne Anderson, Esq.
Central Vermont Public Service Corporation
77 Grove Street
Rutland, VT 05701 (**CVPSC**)

James Matteau, Executive Director
Windham Regional Commission
139 Main Street, Suite 505
Brattleboro, VT 05301 (**WRC**)

Robert E. Woolmington, Esq.
Whitten, Woolmington, Campbell & Boepple, P.C.
4900 Main Street – PO Box 2748
Manchester Center, VT 05255-2748
(**TransCanada Hydro Northeast**)

Robert M. Fisher, Esq.
Fisher & Fisher - 114 Main Street – PO Box 621
Brattleboro, VT 05302-0621
(**Town of Brattleboro**)

Jared M. Margolis, Esq.
151 Cilley Hill Road
Jericho, VT 05465 (**NEC**)

Clay Turnbull
New England Coalition
PO Box 545 - Brattleboro, VT 05302 (**NEC**)

Peter H. Zamore, Esq. - Benjamin Marks, Esq.
Sheehey Furlong & Behm, PC - 30 Main Street - P.O. Box 66
Burlington, VT 05402 (**GMP**)

Donald J. Rendall, Jr., Esq., General Counsel
Green Mountain Power Corporation
163 Acorn Lane - Colchester, VT 05446 (**GMP**)

Caroline S. Earle, Esq.
Law Office of Caroline S. Earle, PLC
107 State Street – PO Box 1385
Montpelier, VT 05601-1385 (**IBEW**)

Jeffrey C. Wimette
IBEW Local No. 300
3 Gregory Drive - South Burlington, VT 05403-6061
(**IBEW Local No. 300**)

Sandra Levine, Senior Attorney
Conservation Law Foundation
15 East State Street - Suite 4
Montpelier, VT 05602-3010 (**CLF**)

James A. Dumont, Esq.
Law Offices of James A. Dumont, Esq. PC
15 Main Street – PO Box 229
Bristol, VT 05443 (**VPIRG**)

Sandra Dragon, President
Associated Industries of Vermont
PO Box 630
Montpelier, VT 05601 (**AIV**)

J. Randall Pratt, Manager – Government Relations
Vermont Electric Cooperative, Inc.
42 Wescom Road - Johnson, VT 05656 (**VEC**)

Jon Groveman, Esq.
Vermont Natural Resources Council
9 Bailey Avenue - Montpelier, VT 05602

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 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,)
operation of the Vermont Yankee Nuclear Power Station,)
including the storage of spent-nuclear fuel)

Docket No. 7440

**THE DEPARTMENT OF PUBLIC SERVICE'S RESPONSE TO ENTERGY'S
MEMORANDUM DATED MARCH 7, 2012, RESPONSE TO BOARD INQUIRIES
FROM STATUS CONFERENCE DATED MARCH 9, 2012, RESPONSE TO
ENTERGY'S MOTION FOR DECLARATORY RULING, AND CROSS-MOTION FOR
DECLARATORY RULING**

The Department of Public Service ("Department") responds herein to Entergy's Response to the Board's Memorandum dated March 7, 2012 ("Entergy Response"). The Department also responds to several questions raised by the Board at the 3/9/12 Status Conference. Finally, the Department responds to Entergy's Motion for Declaratory Ruling regarding continued operations, and cross-moves pursuant to Rule 2.403 of the Board's Rules of Practice for a declaratory ruling that all aspects of the CPGs issued in Docket 6545, 6812 and 7082, including the substantial obligations associated with those CPGs, remain in effect pending a final decision by this Board.¹

¹ Although the Department is interested in a prompt decision on its cross-motion, the motion may be decided on a schedule separate from Entergy's pending motion for a declaratory ruling regarding operations after March 21, 2012.

I. Entergy's Concessions at the Status Conference

The Department's response to Entergy is shaped in part by the significant concessions made by Entergy at the status conference and in pleadings filed at the Federal District Court.²

Entergy has now conceded that:

- The Board should either reopen the record or begin a new proceeding and should not rule based upon the existing record, contrary to the Motion it previously filed (Tr. 3/9/12 at 54:8-55:12);
- The Board has jurisdiction to consider its petition for continued operations, including storage of spent nuclear fuel, under 30 V.S.A. § 231, and should consider appropriate criteria from 30 V.S.A. § 248 when evaluating the petition (Tr. 3/9/12 at 9:24-10:11), and
- The Board may consider Entergy's operating history and regulatory relations with the State, including misrepresentations made by Entergy to the Board regarding underground piping, in the context of considering whether Entergy should be granted a CPG in this proceeding (Tr. 3/9/12 at 35:9-16).

Entergy should be held to its representations; in the event that Entergy subsequently takes positions inconsistent with those taken by it at the status conference and in its pleadings, the Department reserves its right to supplement its responses to Entergy's 3/7/12 filing with regard to these matters.

II. The Scope of the District Court's Order

In its March 7 response, Entergy has argued for a sweeping interpretation of the federal district court's order in *Entergy v. Shumlin*, and seeks to exclude much relevant information on

² A copy of Entergy's Reply to the State of Vermont's Opposition to Plaintiffs' Motion for Relief from Judgment Under Rule 60(b), for Injunction Pending Appeal, and for an 'Indicative Ruling' on Their Rule 60(b) Motion in *Entergy v. Shumlin* ("Entergy Reply"), as well as the State's Motion for Judicial Notice, are attached hereto.

the theory that such information touches on preempted matters. The Board should reject Entergy's attempt at narrowing the record.

Entergy claims that information relevant to its petition which also touches on preempted matters should be excluded entirely from this proceeding. Entergy Response at 2. The case cited by Entergy in its response involved judicial review of a city ordinance which was challenged as preempted by federal law. *Vango Media, Inc. v. City of New York*, 34 F.3d 68 (2d Cir. 1994). The district court in *Entergy v. Shumlin* considered cases such as *Vango* and struck down only Act 160 and one sentence in Act 74. Its ruling as to the scope of the Board's inquiry is specified in the injunctive relief, and is not governed by *dicta* relating to a court's consideration of laws challenged as preempted.

The scope of this Board's inquiry under 30 V.S.A. § 231 has not been altered by the federal district court's decision, even if some of the evidence generated pursuant to Act 160 will be evaluated to determine whether its use is enjoined. The mere fact that relevant information – such as Entergy's misrepresentations to this Board – also may relate to radiological health and safety does not make such evidence improper as to the Board's consideration of Entergy's suitability as the operator of this plant, as Entergy has conceded (Tr. 3/9/12 at 35:9-16).

III. 10 V.S.A. § 6522(c)(2) Does Not Prevent the Board from Ruling on Spent Nuclear Fuel Storage Past March 21, 2012

At the status conference, the Board inquired as to whether it is constrained from granting a CPG for the continued storage of spent nuclear fuel past March 21, 2012 by the language contained in 10 V.S.A. § 6522(c)(2), which provides:

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. Authorized 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.

10 V.S.A. § 6522(c)(2).

The Department believes that this provision must be read in the larger context of the entire statute, 10 V.S.A. § 6522, which contemplates two separate approvals regarding storage of spent nuclear fuel: a CPG for the “construction or establishment of any new storage facility for spent nuclear fuel,” which CPG was required to contain an end date of March 21, 2012, just like the operations CPG; and legislative approval for the continued “[s]torage of spent fuel derived from the operation of Vermont Yankee after March 21, 2012.” See 10 V.S.A. §§ 6522(a) & 6522(c)(2),(5).

The Board issued a CPG for the newly-constructed facility on April 26, 2006. *Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a certificate of public good to construct a dry fuel storage facility at the Vermont Yankee Nuclear Power Station, in Vernon, Vermont, Docket 7082, Certificate of Public Good dated 4/26/2006 (“7082 CPG”)*. As required by 10 V.S.A. § 6522(c)(2), the CPG provided that 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.” *Id.* at ¶ 3. The CPG also complied with the expiration date set forth in 30 V.S.A. § 6522(c)(2).

Before the district court’s decision in *Entergy v. Shumlin*, the statute granted authority to the Legislature for approval of “[s]torage of spent fuel derived from the operation of Vermont Yankee after March 21, 2012.” 10 V.S.A. § 6522(c)(4). After that decision, pending appeal, the Board has authority to grant a CPG for storage of spent nuclear fuel beyond that date at a

minimum under 30 V.S.A. § 231. As Entergy acknowledged at the status conference, the Board has jurisdiction under § 231 to include in this docket consideration of spent nuclear fuel storage as part of the continued operation of the plant. (Tr. 3/9/12 at 9:24-10:11)

IV. The Board is Enjoined from Enforcing Orders that would Require Cessation of Operations based upon Entergy's Failure to Obtain a New CPG

The Board has asked whether the provisions of the Final Orders in Dockets 6545 and 7082, requiring Entergy to obtain a new CPG in order to continue operating past March 12, 2012 or to store spent nuclear fuel generated after that date, can be enforced even if the CPGs themselves remain in effect pursuant to 3 V.S.A. § 814(c). The Department previously briefed why it believes Section 814(c) applies in this matter; the Department believes that to the extent that 3 V.S.A. § 814(c) does not apply to any of the Board's orders, the district court has enjoined the Board from enforcing orders that would require the cessation of operations.

The provisions identified by the Board are set forth below.

From Docket 6545:

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.

Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC, and related transactions, Docket 6545, Final Order dated 6/13/02 at 159, ¶ 8.

From Docket 7082:

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.

Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a certificate of public good to construct a dry fuel storage facility at the Vermont Yankee Nuclear Power Station, in Vernon, Vermont. Docket 7082, Order dated 4/26/06 at 90, ¶ 4.

If it is assumed that the Board can enforce these provisions notwithstanding the requirements of 3 V.S.A. § 814(c), then the Department believes that the Board is enjoined from compelling Vermont Yankee to shut down after March 21, 2012 despite the lack of a current CPG permitting operation or the storage of spent nuclear fuel generated after that date.

The district court's injunction provides, in pertinent part:

Defendants are permanently enjoined . . . from enforcing Act 160 by bringing an enforcement action, or taking other action, to compel Vermont Yankee to shut down after March 21, 2012 because it failed to obtain legislative approval (under the provisions of Act 160) for a Certificate of Public Good for continued operation . . .

Defendants are permanently enjoined . . . from enforcing the single provision within section 6522(c)(4) of title 10, enacted as part of Act 74, stating "Storage of spent nuclear fuel derived from the operation of Vermont Yankee after March 21, 2012 shall require the approval of the general assembly under this chapter," by bringing an enforcement action, or taking other action, to compel Vermont Yankee to shut down or to prevent storage of spent nuclear fuel after March 21, 2012 because it failed to obtain legislative approval . . . for a Certificate of Public Good for storage of spent fuel . . .

Entergy v. Shumlin at 100-101.

Act 160 and Act 74 required Entergy to obtain legislative approval for continued operations after March 21, 2012. The district court concluded that the statutory requirements for legislative approval were preempted and enjoined their enforcement. Entergy contends that the fact that it will not possess a current CPG as of March 21, 2012 is traceable to Entergy's failure "to obtain legislative approval (under the provisions of Act 160) for a Certificate of Public Good

for continued operation” and a failure “to obtain legislative approval . . . for a Certificate of Public Good for storage of spent fuel” In light of the Court’s decision and while that decision remains on appeal, the Department believes that the injunction forecloses any attempt to force closure based upon a lack of compliance with the above cited portions of the orders. That is, the district court’s injunction constrains the Board’s ability to force cessation of operations. While Entergy’s CPG petition is pending, the Board cannot, consistent with the injunction, order the plant to close based on Entergy’s lack of a current CPG. The Board, however, is empowered to require Entergy to comply with all of the obligations of the CPGs that remain in existence, as set forth in further detail below.

V. The Obligations under the CPG Granted in Dockets 6545, 6812 and 7082 Remain in Effect

As provided in 3 V.S.A. § 814(c),

[w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, *the existing license does not expire* until the application has been finally determined by the agency . . .

3 V.S.A. § 814(c)(emphasis supplied).

Entergy has relied on this provision to argue that it is permitted to continue operations and to store spent nuclear fuel past March 21, 2012 pending a decision by the Board. Entergy Reply at 3. However, Entergy has yet to acknowledge that in addition to providing the basis for continued operations and spent nuclear fuel storage, the Docket 6545, 6812 and 7082 CPGs impose significant obligations on Entergy that also must remain in place pending a final determination by the Board if the license is, as Entergy has urged, to remain in effect.

The ongoing obligations imposed by the CPG in Docket 6545 include the following:

- Notification every six months as to the status and amounts of guaranties of Entergy Corporation that are outstanding at the time of the filing;

- Reports as to the status of the decommissioning funds and commitment to make this information available to the public and participate in public discussions on the adequacy of the decommissioning fund;
- Five year updates of the site-specific decommissioning study and submission of the results to the Board and the Department, providing information to the public of the estimated cost of decommissioning participation in public discussions of the results;
- Yearly updates of the Post Shutdown Decommissioning Activities Report (“PSDAR”) that it has pledged it would prepare and maintain in the event of an unexpected shutdown of Vermont Yankee;
- Filing of any amendments to Entergy’s NRC license;
- Submission of any Federal Energy Regulatory Commission (“FERC”) filings related to Rates;
- Submission of filings with respect to Entergy’s Wholesale Generator status, and
- Full compliance with Vermont law to the extent that its requirements are not inconsistent with specific requirements imposed by FERC, NRC, the Securities and Exchange Commission and any other federal agencies.

Investigation into General Order No.45 Notice filed by Vermont Yankee Nuclear Power

Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear

Vermont Yankee, LLC, and related transactions, Docket 6545, Certificate of Public Good dated 6/13/02 (“6545 CPG”) at 1-3, ¶¶ 1, 3-9.

The ongoing obligations imposed by the CPG in Docket 6812 include the following:

- Continued payment of monies into the Clean Energy Development Fund (pursuant to the MOU);
- Prohibition from engaging in below-market-price sales of power from Vermont Yankee to Entergy affiliates as a means of avoiding or reducing the payments to the State of Vermont under the Memorandum of Understanding.

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, Docket 6812, Second

Amended Certificate of Public Good dated 1/6/2005 Docket 6812 (“6812 Second CPG”) at 2, ¶
1(d).

The ongoing obligations imposed by the CPG in Docket 7082 include the following:

- Entergy is authorized to store only spent nuclear fuel that is derived from the operation of Vermont Yankee and may not store spent nuclear fuel derived from any other source, and
- Entergy is required to comply with the terms and conditions of the Memorandum of Understanding between Entergy VY and the Department of Public Service dated June 21, 2005 (“7082 MOU”).

The ongoing obligations imposed by the 7082 MOU include the following:

- Monitoring and surveillance of each cask located on the DFS pad;
- Prohibition against the use of corrosive or flammable chemicals on or within fifteen feet of the DFS pad for de-icing;
- No storage of waste from out of state;
- Entergy to use commercial best efforts to ensure that high-level SNF stored at the plant is removed from the site in a reasonable manner and as quickly as possible to an interim or permanent location outside of Vermont;
- Entergy responsible for all costs of security for the Station required under its license from or otherwise by the NRC;
- Quarterly payments to the Clean Energy Development Fund of \$625,000, and
- Agreement not to file an action or petition based on or otherwise seek, claim, defend or rely on the doctrine of federal preemption to prevent enforcement of its express obligations under the MOU.

7082 MOU at 2-3, ¶¶ 5-8; 10-12.

None of these obligations were appealed at the time these CPGs were entered; none were the subject of Entergy’s lawsuit against the State of Vermont. Entergy did not seek to have the district court enjoin the Board from requiring it to continue to fulfill the obligations associated

with the licenses that are extended. While Entergy may argue that the obligations set forth are time-limited, that is equally true of the plant operations authorized by these CPGs. Entergy cannot have it both ways. Under 3 V.S.A. § 814(c), its “existing license does not expire until the application has been finally determined by the agency.” By extending the license beyond its expiration date, 3 V.S.A. § 814(c) serves not only to extend the privileges associated with the license, but the responsibilities as well.

VI. The Board Should Open a New Docket

At the status conference, the Department recognized that two procedural paths were possible in this matter – resuming the current docket or starting over. After considering the arguments of the various parties and the history of this proceeding, the Department believes that the Board should open a new docket.

In evaluating the proposals made at the status conference, the Department realized that the burden of poring over the voluminous record in this proceeding and potentially litigating the effect of the district court’s ruling on that record would likely exceed the burden of starting over. Rather than engaging in that exercise, the Department proposes that a new docket be opened. If parties would like to rely on information from the prior docket, they can reintroduce any such evidence, subject to renewed objection. Given the length of time that has passed since the last filings, the Department anticipates that, at a minimum, evidence from the present docket will need to be updated in order to have relevance in a new docket.

VII. Application of 30 V.S.A. § 231 after the District Court’s Decision

At the status conference, the Board inquired as to the effect of the federal district court’s decision on the scope of this proceeding. As set forth above, the Department believes that the

decision and orders will have very little impact on the criteria to be applied. The Department believes that the following criteria should be considered by the Board:

1. 30 V.S.A. § 231(a). Entergy must demonstrate that its continued operation, including the storage of spent nuclear fuel,³ of the Vermont Yankee Plant will promote the general good of the state.

The Board has broad authority under Section 231 to consider factors in granting or denying a Certificate of Public Good. Indeed, “[b]ecause 30 V.S.A. § 203 permits the Board to exercise its jurisdiction ‘so far as may be necessary to enable [it] to perform [its] duties and exercise the powers conferred upon [it] by law,’ in issuing a CPG, the Board may tailor conditions appropriate to the planned activities of the petitioner.” *See Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, certain affiliates thereof, and FairPoint Communications, Inc. for approval of an asset transfer, acquisition of control by merger and associated transactions*, Docket 7270, Order dated 12/21/07 at 23. Under Section 231, Entergy must demonstrate that it possesses the managerial and technical qualifications, as well as the financial capacity to continue plant operations. Its financial capacity extends to continued plant operations and the non-radiological aspects of managing spent nuclear fuel and decommissioning. In addition, other factors usually considered in Section 231 proceedings, including Entergy’s technical expertise, its ability to provide adequate service, its ability to provide adequate facility maintenance, its financial stability, its ability to obtain financing, its business reputation as a fair and trustworthy business partner and its relationship with customers, apply here.

³ In its latest filing in the Federal District Court, it seeks to “enjoin Defendants, permanently and pending appeal, from taking any action designed to, or having the effect of, forcing Vermont Yankee to curtail operations pending a decision by the PSB on Plaintiffs’ petition for a CPG for continued operation of Vermont Yankee and storage of SNF derived from such operation.” Entergy Reply at 10.

2. In applying § 231, the Board should also consider the following criteria provided by § 248:

- a. 30 V.S.A. § 248(b)(1) – Orderly Development of the Region;
- b. 30 V.S.A. § 248(b)(2) – Need for Present and Future Demand for Service;
- c. 30 V.S.A. § 248(b)(3) – System Stability and Reliability;
- d. 30 V.S.A. § 248(b)(4) – Economic Benefit to the State;⁴
- e. 30 V.S.A. § 248(b)(5) – Aesthetics, historic sites, air and water purity, the natural environment and the public health and safety,⁵ and
- f. 30 V.S.A. § 248(b)(7) – Consistency With the Department’s 20-Year Plan.

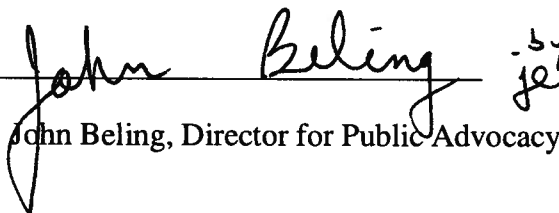
Given the Board’s broad authority under 30 V.S.A. § 231 to determine whether Entergy’s continued operation “will promote the general good of the state,” the Board should consider each of these criteria in determining whether to grant Entergy’s petition.

CONCLUSION

In relation to the Department’s cross-motion, the Board should declare 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.

Dated at Montpelier, Vermont, this 16th day of March, 2012.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:  ^{by je}
John Beling, Director for Public Advocacy

cc: Service list

⁴ While the Board cannot condition “the issuance of a Certificate of Public Good for continued operation on the existence of a below-wholesale-market power purchase agreement between Plaintiffs and Vermont utilities, or requiring Vermont Yankee to sell power to Vermont utilities at rates below those available to wholesale customers in other states,” it is otherwise not constrained in its consideration of the economic issues and may, for example, consider whether Entergy has a PPA with a Vermont Utility after the end of this month when applying this criterion. *Entergy v. Shumlin* at 101.

⁵ The Board’s inquiry as to the impacts to air and water purity, the natural environmental and public health and safety must be limited to those that have solely non-radiological impacts.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

ENERGY NUCLEAR VERMONT YANKEE, LLC)
and ENERGY NUCLEAR OPERATIONS, INC.)

Plaintiffs,)

v.)

Civil Action No. 11-cv-99

PETER SHUMLIN, in his official capacity as)
GOVERNOR OF THE STATE OF VERMONT;)
WILLIAM H. SORRELL, as ATTORNEY GENERAL)
OF THE STATE OF VERMONT; and JAMES VOLZ,)
JOHN BURKE, and DAVID COEN, in their official)
capacities as members of THE VERMONT PUBLIC)
SERVICE BOARD)

Defendants.)

**STIPULATED MOTION FOR JUDICIAL NOTICE OF TWO DOCUMENTS FROM
VERMONT PUBLIC SERVICE BOARD DOCKET NUMBER 7440 PROCEEDING**

The State respectfully asks that the Court take judicial notice of the two exhibits attached to this motion (Exhibit A and Exhibit B) in connection with the Court’s consideration of Entergy’s post-judgment motions. The basis for this request is set forth below.

MEMORANDUM OF LAW

Judicial notice is available “at any stage of the proceeding” for adjudicative facts that are “not subject to reasonable dispute.” Fed. R. Evid. 201. The State respectfully requests that the Court take judicial notice of the following documents:

(1) Exhibit A: Entergy’s March 13, 2012 “Motion for declaratory ruling concerning 3 V.S.A. § 814(b) and chapter 157 of title 10 of the Vermont Statutes Annotated,” which was filed with the Vermont Public Service Board (PSB) in PSB Docket Number 7440.

(2) Exhibit B: March 14, 2012 Memorandum from Susan M. Hudson, Clerk of the PSB,

to Parties in PSB Docket Number 7440.

The Court can take judicial notice of these two documents because the existence of these documents is “not subject to reasonable dispute.” Fed. R. Evid. 201. Exhibit A is Entergy’s motion filed with the Public Service Board on March 13, as referenced in Entergy’s recent reply in further support of its post-judgment motions. *See* ECF No. 204 at 2 n.1. Exhibit B is a one-page letter from the Clerk of the PSB in which the PSB asks other parties to PSB Docket Number 7440 to submit briefing on Entergy’s motion by March 19, 2012.

CONCLUSION

Defendants respectfully request that the Court take judicial notice of the attached exhibits.

LOCAL RULE 7(A)(7) STATEMENT

As required by Local Rule 7(a)(7), counsel for Defendants contacted Plaintiffs and Plaintiffs’ counsel stated that they stipulate to the relief requested in this motion.

Dated March 14, 2012, at Montpelier, Vermont.

David C. Frederick
Scott H. Angstreich
William J. Rinner
Kellogg, Huber, Hansen, Todd, Evans
& Figel, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
dfrederick@khhte.com
sangstreich@khhte.com
wrinner@khhte.com

Of Counsel

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: /s/ Scot L. Kline
Scot L. Kline
Bridget C. Asay
Kyle H. Landis-Marinello
Justin E. Kolber
Assistant Attorneys General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171
skline@atg.state.vt.us
basay@atg.state.vt.us
kylelm@atg.state.vt.us
jkolber@atg.state.vt.us

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March 2012, I electronically filed the above motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Robert B. Hemley, Matthew B. Byrne, Kathleen M. Sullivan, Faith Gay, Robert C. Juman, Sanford I. Weisburst, and William B. Adams.

STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

By: /s/ Justin E. Kolber
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171
jkolber@atg.state.vt.us

Dated: March 14, 2012

Counsel for Defendants

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

ENTERGY NUCLEAR VERMONT)
YANKEE, LLC and ENTERGY NUCLEAR)
OPERATIONS, INC.,)

Plaintiffs,)

v.)

Docket No. 1:11-cv-99

PETER SHUMLIN, in his official capacity as)
GOVERNOR OF THE STATE OF)
VERMONT; WILLIAM SORRELL, in his)
official capacity as the ATTORNEY)
GENERAL OF THE STATE OF VERMONT;)
and JAMES VOLZ, JOHN BURKE, and)
DAVID COEN, in their official capacities as)
members of THE VERMONT PUBLIC)
SERVICE BOARD,)

Defendants.)

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR MOTIONS FOR RELIEF
FROM JUDGMENT UNDER RULE 60(b), FOR INJUNCTION PENDING APPEAL,
AND FOR AN "INDICATIVE RULING" ON THEIR RULE 60(b) MOTION**

Kathleen M. Sullivan (*admitted pro hac vice*)
Faith E. Gay (*admitted pro hac vice*)
Robert Juman (*admitted pro hac vice*)
Sanford I. Weisburst (*admitted pro hac vice*)
William B. Adams (*admitted pro hac vice*)
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Fax: (212) 849-7100

Robert B. Hemley
Matthew B. Byrne
GRAVEL & SHEA
76 St. Paul Street, 7th Floor
P.O. Box 369
Burlington, VT 05402-0369
Telephone: (802) 658-0220
Fax: (802) 658-1456

*Attorneys for Plaintiffs Entergy Nuclear Vermont Yankee, LLC
and Entergy Nuclear Operations, Inc.*

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARGUMENT	3
I. THIS COURT’S DECISION PROVIDED THAT VERMONT YANKEE SHOULD BE PERMITTED TO OPERATE AFTER MARCH 21, 2012, WHILE THE PSB CONSIDERS ITS PETITION FOR A NEW CPG, AND THAT CONTINUED OPERATION NECESSITATES CONTINUED STORAGE OF SNF	3
II. THE ATTORNEY GENERAL FAILS TO OFFER ANY BASIS TO DENY PLAINTIFFS’ MOTIONS.....	6
A. Plaintiffs Have Shown Extraordinary Circumstances.....	6
B. Plaintiffs Do Not Seek This Court’s Oversight Of The PSB’s Processes	6
C. Plaintiffs’ Failure To File A Rule 59(e) Motion Is Irrelevant	7
D. Plaintiffs’ Requested Injunctive Relief Is Not Overbroad.....	7
E. The Requested Injunction Against State Officials Is Based On Federal Law And Thus Will Not Violate Sovereign Immunity.....	8
F. The Supremacy Clause Applies To Actions By State Agencies.....	8
G. Granting Rule 60(b) Relief Will Simplify The Appeal	9
H. The Prospect Of An Adverse Opinion From The PSB On The Question Of Interim Operation Is Not Speculative	9
I. An Injunction Is Necessary To Preserve The Status Quo.....	9
CONCLUSION.....	10

Plaintiffs respectfully submit this reply in further support of their motions for (1) relief from the Judgment under Fed. R. Civ. P. 60(b); and (2) an injunction pending appeal.

INTRODUCTION

These motions have been necessitated by actions and statements of Vermont officials that, on the eve of the expiration of Vermont Yankee's ("VY") current CPG on March 21, 2012, question central premises of this Court's Decision & Order of January 19, 2012 ("Decision"). On February 22, 2012, the Vermont Public Service Board ("PSB") issued a request for comments that expressly questioned two central premises of this Court's Decision: (1) that VY may continue to operate and to store spent nuclear fuel ("SNF") derived from such operations after March 21, 2012, pending PSB action upon Plaintiffs' petition for a new certificate of public good ("CPG"); and (2) that no *legislative* approval is required under the invalidated Act 74 for VY to store SNF at the site derived from post-March 21, 2012 operation. The PSB thus raised the very spectre this Court sought clearly to avoid in its Decision: namely, that Vermont would require VY to cease operation on March 21, 2012, causing the shutdown of VY and the loss of the jobs of the more than 600 employees who work there. Plaintiffs promptly filed motions seeking relief from this Court on February 27, 2012.

On March 8, 2012, the Vermont Attorney General ("AG") filed an "opposition" stating his agreement with the Vermont Department of Public Service ("DPS") that "Entergy may continue to operate Vermont Yankee under the terms of its current CPG until the Board rules on Entergy's CPG petition." Opp. 3. Plaintiffs were optimistic, in light of this concession, that they might be able to withdraw their motions. But the next day, March 9, 2012, the PSB Defendants stated at a PSB status conference that the AG had spoken only for the AG and the DPS, *not* for the PSB. See Tr. of PSB Proceeding [Draft] 63:6-10, 23-25, Mar. 9, 2012 (Adams Reply Decl. Ex. A) (PSB Chairman Volz: "I'm guessing there's a reason ... why the Attorney General

specified the Department and the Attorney General didn't specify anyone else We [*i.e.*, the PSB] still have to sort this out on our own, which is what we're planning to do."); *id.* at 63:18-22 ("[A]n agreement by the Department and the Attorney General's Department...doesn't confer jurisdiction on us or authority on us that we could then grant to you. So, you know, we still have to sort this out on our own, which is what we're planning to do.").¹

The PSB's continued questioning of the AG's and DPS's position that the status quo of continued operation should be preserved pending orderly decision on Plaintiffs' petition for a new CPG directly threatens Plaintiffs' ability to operate VY after March 21, 2012, and leaves Plaintiffs no choice but to press forward with their motions before this Court and thus to file this reply. A statement from the PSB—in direct conflict with this Court's Decision—that Plaintiffs may not operate during the interim period stands irreparably to damage Plaintiffs' ability to keep VY open and to retain critical employees. Plaintiffs respectfully submit that this Court should grant the relief requested by their motions so that such irreparable harm is avoided.

Nor is it Plaintiffs that have caused the urgency of these motions on the very eve of the expiration of the existing CPG on March 21, 2012. The PSB was delayed in resolving Plaintiffs' petition for a new CPG by the presence of Vermont statutory provisions that this Court has now found to be federally preempted. *See* Tr. of PSB Proceeding, 44:2-4, Nov. 10, 2010 (Adams Reply Decl. Ex. B) (Chairman Volz: "We're not going anywhere [in Docket No. 7440 on Plaintiffs' petition for a new CPG]. The Legislature says we can't issue an order."). Absent those invalid provisions, the PSB would almost certainly have provided a final answer before

¹ In light of Chairman Volz's statement that the AG's opposition did not speak on behalf of the PSB, Plaintiffs filed on March 13, 2012, a motion with the PSB seeking, *inter alia*, a declaration from the PSB that VY may continue operating after March 21, 2012, and that the General Assembly need not approve the storage of SNF derived from post-March 21, 2012 operation of VY. Unlike the motions before the Court, which raise issues of federal law, the PSB motion primarily raises issues of state law.

March 21, 2012, on Plaintiffs' CPG petition, which was timely filed in 2008. Plaintiffs should not be penalized for a delay caused by the State's enactment and enforcement of preempted laws.

ARGUMENT

Plaintiffs first summarize the two central premises of this Court's Decision that the PSB has called into question, and how the prospect of negative answers from the PSB stands irreparably to harm Plaintiffs. Plaintiffs then respond to the AG's specific arguments.

I. THIS COURT'S DECISION PROVIDED THAT VERMONT YANKEE SHOULD BE PERMITTED TO OPERATE AFTER MARCH 21, 2012, WHILE THE PSB CONSIDERS ITS PETITION FOR A NEW CPG, AND THAT CONTINUED OPERATION NECESSITATES CONTINUED STORAGE OF SNF

This Court's Decision squarely addressed two issues that the PSB has now called into question on the eve of the March 21, 2012 expiration of Plaintiffs' current CPG.

First, this Court did not issue an injunction providing that Plaintiffs could operate VY (and store SNF derived from such operation) after March 21, 2012, pending the PSB's determination of Plaintiffs' petition for a new CPG, only because the Court viewed such an injunction as unnecessary as Vermont law already provided such relief. *See* Decision 8 ("Vermont law provides that a license subject to an agency's notice and hearing requirements does not expire until a final determination on an application for renewal has been made.") (citing 3 V.S.A. § 814). The AG and DPS agree that § 814(b) provides this relief. *See* Opp. 11 ("[G]iven the Court's decision, § 814(b) applies and Entergy may continue to operate under the terms of its current CPGs while its CPG petition remains pending at the Board."). The PSB, by contrast, while not yet definitively expressing its view, has suggested that it may disagree with this fundamental premise. *See, e.g.*, Ex. A at 13:7-9 (Chairman Volz: "[H]ow does Section 814 expand that amount or allow for the expansion of that amount [of SNF]?"); *id.* at 60:7-9 ("How does 3 V.S.A. Section 814 extend a deadline set in a condition of the sale approval?").

The PSB's suggestion is wrong, and this Court's and the AG's (and the DPS's) understanding of § 814(b) is correct, because none of the statutory provisions or orders invoked by the PSB expressly purports to trump this background rule of administrative law. But even if this premise were incorrect as a matter of Vermont law, an injunction under *federal law* to effectuate this Court's judgment is appropriate. Plaintiffs should not be penalized for the PSB's delay in processing Plaintiffs' timely filed 2008 petition for an amended or new CPG, which delay resulted solely from the presence in Vermont's statutory law of provisions that have now been invalidated as federally preempted. *See* Ex. B at 44:2-4 (Chairman Volz: "We're not going anywhere. The Legislature says we can't issue an order.").

Second, on the issue of legislative approval for storage of SNF, this Court viewed 10 V.S.A. § 6522(c)(4) as "the only provision in Chapter 157 which requires approval of any kind to store fuel beyond March 21, 2012." Decision 79 n.27. This view is correct because § 6522(c)(4) is the only provision to mention "the approval of the general assembly." Section 6522(c)(2), which states that any CPG issued by the PSB for construction of an SNF-storage facility must limit the storage to "the amount derived from operation of the facility up to, but not beyond, March 21, 2012," is a vestige of the now-invalidated Act 74 regime, under which (a) the PSB was allowed to approve the construction or establishment of a SNF storage facility at VY and, if it granted such approval, was required to limit the quantity of SNF stored on site to the amount derived from operation until March 21, 2012; and (b) the General Assembly assumed control of storage of SNF derived from post-March 21, 2012 operation under § 6522(c)(4). With the General Assembly's authority under the latter provision invalidated, neither the PSB nor the General Assembly retains direct authority over storage of SNF derived from post-March 21, 2012 operation. The AG and DPS agree with this reasoning. *See* Opp. 10 ("[G]iven the Court's

injunction directed at the last sentence of § 6522(c)(4), § 6522(c)(2) does not restrict the Board's authority to consider Entergy's petition for a renewed CPG for storage of spent fuel at Vermont Yankee."). But the PSB has expressed its potential disagreement in a way that threatens to use the General Assembly's purported authority over SNF storage to stop operation of VY. *See Ex. A* at 15:4-5, 7-11 (Chairman Volz: "[T]hat one sentence was struck from 6522(c)(4). ... But there are other parts of Chapter 157 which gives the Legislature authority over the storage of all kinds of different kinds of waste that hasn't been struck."); *id.* at 15:22-24 ("Isn't the Board's authority on 10 V.S.A. Section 6522 constrained?"). Had the PSB's suggested interpretation been correct under Vermont law, then this Court would have invalidated § 6522(c)(2) along with § 6522(c)(4) because both are contained in Act 74, which is federally preempted as impermissibly regulating nuclear safety. Accordingly, this Court should grant relief by (1) clarifying that it did not view § 6522(c)(2) as requiring legislative approval for storage of SNF derived from post-March 21, 2012 operations; and (2) in the event the PSB's suggested statutory interpretation is correct, invalidating § 6522(c)(2) as preempted by federal law.

The very real prospect that the PSB will answer its own questions adversely to Plaintiffs, and thus order that VY must cease operation or storage of SNF from operation after March 21, 2012, stands irreparably to harm Plaintiffs. Plaintiffs would then be forced to cease operation or to operate in defiance of the PSB's opinion. Plaintiffs would face the possibility of, *inter alia*, a diminished credit rating, a loss of critical employees, *see* Pls.' Mem. Of Law In Support Of Their Expedited Mot. For An Inj. Pending Appeal, ECF No. 190, at 11-13, and a demerit in their application for a new CPG, since the PSB has suggested that interim operation it deems unlawful will weigh against granting a new CPG, *see Ex. A* at 70:5-11 (Chairman Volz: "If Entergy Vermont Yankee's continued operation of Vermont Yankee is not in compliance with any

applicable Board orders or Vermont laws, would that be a relevant consideration in the Board's determination of whether to grant Entergy Vermont Yankee a Section 231 CPG?").

II. THE ATTORNEY GENERAL FAILS TO OFFER ANY BASIS TO DENY PLAINTIFFS' MOTIONS

Because the PSB has asserted that the AG does not speak for the PSB in stating that VY may continue operating (and storing SNF) after March 21, 2012, the motions should be granted to preserve the status quo. The AG's arguments in opposition are unpersuasive.

A. Plaintiffs Have Shown Extraordinary Circumstances

The AG asserts (Opp. 3) that Plaintiffs have not shown that the PSB's questions regarding Plaintiffs' ability to continue operating VY (and storing SNF from such operations) after March 21, 2012, give rise to extraordinary circumstances. The AG relies in large part on its concession (that Plaintiffs may engage in such operation and storage), but, as noted above, the PSB has stated that it is not bound by that concession. Even though the PSB has not given a final answer to its own questions, the PSB's raising of such uncertainty on the very eve of a prospective March 21, 2012 shutdown itself stands irreparably to harm Plaintiffs. Given that the questions were answered by this Court's Decision in Plaintiffs' favor, this Court should grant the motions to protect Plaintiffs from such harm. *See* Prelim. Inj. Hr'g Tr., 169:8-12, June 23, 2011 (Adams Reply Decl. Ex. C) (John T. Herron: "The whole issue of, of running a nuclear power plant is to have a schedule, is to have certainty, and is to stay disciplined to that process, and, when we start to move this around, you deviate from that, and you create uncertainty, and you create safety issues when you do that.").

B. Plaintiffs Do Not Seek This Court's Oversight Of The PSB's Processes

The AG misconstrues (Opp. 4) Plaintiffs' motions as a request for this Court to exercise ongoing oversight of the PSB's processes. To the contrary, as explained above, the PSB has

called into question two central issues that this Court already resolved, but as to which further clarification from the Court is necessitated by the PSB's questions. Contrary to the AG's suggestion (Opp. 5), the PSB has suggested that it does not view this Court as having decided those questions. None of the AG's cited cases (Opp. 4-5) involved a state agency that, within its own proceeding, called into question issues already resolved by a federal court's judgment.

C. Plaintiffs' Failure To File A Rule 59(e) Motion Is Irrelevant

The AG does not respond to Plaintiffs' explanation that the Rule 60(b) motion is timely because it was filed within the deadline for filing a notice of cross-appeal, *see* Pls.' Mem. Of Law In Support Of Their Mot. For Relief From Judgment Under Rule 60(b), ECF No. 194, at 4-5 n.6, and the AG (Opp. 5-6) cites no authority holding that failure to file a Rule 59(e) motion requires rejecting a Rule 60(b) motion. Moreover, Plaintiffs saw no need to file a Rule 59(e) motion because this Court's Decision appeared clearly to resolve the questions of the need for legislative approval for SNF storage and whether VY could continue operation (and storage of SNF from such operation) after March 21, 2012. The PSB's unanticipated raising of these questions occurred after the time for filing a Rule 59(e) motion had expired, and Plaintiffs promptly filed a Rule 60(b) motion after the PSB had raised the questions.

D. Plaintiffs' Requested Injunctive Relief Is Not Overbroad

The AG misconstrues (Opp. 6) Plaintiffs' request for injunctive relief as overbroad. To the extent the AG is concerned (Opp. 7) that other state agencies may be constrained by the requested injunction, Plaintiffs are content to narrow their the request as follows: "The Court should enjoin Defendants, [permanently and] pending appeal, from ... taking any action designed to, or having the effect of, forcing Vermont Yankee to curtail operations pending a decision by the PSB on Plaintiffs' petition for a CPG for continued operation of Vermont Yankee and storage of SNF derived from such operation, and any judicial review of that

decision, *on the ground that Plaintiffs have not yet received such a CPG.*” (Emphasis supplied to words added to request made in Pls.’ Expedited Mot. For An Inj. Pending Appeal, ECF No. 190, at 2; *accord* Pls.’ Mot. For Relief from Judgment Under Fed. R. Civ. P. 60(b), ECF No. 193, at 2.)

E. The Requested Injunction Against State Officials Is Based On Federal Law And Thus Will Not Violate Sovereign Immunity

The AG contends (Opp. 8) that Plaintiffs’ requested injunction seeks enforcement of state law and hence would violate sovereign immunity. The AG’s premise is incorrect. Federal law (specifically, the Atomic Energy Act (“AEA”)), not state law, requires both the striking of 10 V.S.A. § 6522(c)(2) (if interpreted in the broad way suggested by the PSB) and the grant of an injunction fully to effectuate this Court’s invalidation of the preempted Vermont laws that delayed the PSB’s resolution of Plaintiffs’ CPG petition. Only because this Court construed state law as protecting Plaintiffs in these respects did this Court refrain from granting relief as a matter of federal law; now that this Court’s state-law holdings have been called into question, this Court may clearly base the same relief upon federal law. *See, e.g., In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2d Cir. 1985) (courts may grant injunctions “when needed to preserve the court’s ability to reach or enforce its decision in a case over which it has proper jurisdiction”); *Dandong v. Pinnacle Performance Ltd.*, No. 10 Civ. 8086, 2011 WL 6156743, at *3 (S.D.N.Y. Dec. 12, 2011) (“courts generally have broad power to issue injunctions to preserve the status quo during a pending litigation”) (quotation omitted).

F. The Supremacy Clause Applies To Actions By State Agencies

The AG mistakenly suggests (Opp. 9) that the Supremacy Clause applies only to state laws or regulations, not to actions by a state agency (like the PSB). *See, e.g., Entergy La., Inc. v.*

La. Pub. Serv. Comm'n, 539 U.S. 39, 47 (2003) (state agency's order preempted by federal law); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 963 (1986) (similar).

G. Granting Rule 60(b) Relief Will Simplify The Appeal

Plaintiffs will withdraw their cross-appeal (which addresses only the two issues called into question by the PSB) if this Court grants Rule 60(b) relief. Absent the cross-appeal, it is evident that the Second Circuit's consideration of this case will be simplified.

H. The Prospect Of An Adverse Opinion From The PSB On The Question Of Interim Operation Is Not Speculative

The AG's opposition, drafted before March 9, 2012, sought to assure Plaintiffs that there is no "imminent risk of concrete harm absent an injunction ... given the position of the [DPS] and the [AG] that, in light of this Court's decision, Entergy may continue to operate under the terms of its current CPGs while its petition remains pending at the Board." Opp. 13. (While contesting imminence, the AG does not contest that harm from a shutdown or a PSB opinion supporting shutdown would be irreparable.) However, on March 9, 2012, the PSB made clear that it does not necessarily agree with the AG's and the DPS's view. In the event that the PSB ultimately disagrees, Plaintiffs will be forced either to cease operating or, if they defy the PSB by continuing to operate, to face the prospect of a diminished credit rating, a loss of crucial employees, and a demerit in the PSB's consideration of Plaintiffs' petition for a new CPG. This harm is sufficiently likely to support an injunction. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("[P]laintiffs seeking preliminary relief [must] demonstrate that irreparable injury is *likely* in the absence of an injunction.").

I. An Injunction Is Necessary To Preserve The Status Quo

The AG concedes that this Court "may modify the injunction to preserve the status quo." Opp. 14. That is exactly the relief Plaintiffs seek. The status quo is that VY is operating and its

600 workers remain employed. The PSB has called into question two central premises of this Court's Decision that go directly to whether Plaintiffs will be able to operate VY after March 21, 2012. Such operation, pending the PSB's ruling on Plaintiffs' petition for a new CPG, is essential so that Plaintiffs are not penalized for the delay that was caused by the presence on Vermont's statute books of two preempted statutes. The AG does not contest that neither it nor the public will suffer harm from interim operation.

CONCLUSION

The Court should (1) declare 10 V.S.A. § 6522(c)(2) and (c)(5) invalid, as preempted by the AEA; (2) enjoin Defendants, permanently and pending appeal, as preempted by the AEA, from enforcing § 6522(c)(2) by bringing an enforcement action, or taking other action, to compel VY to shut down because the "cumulative total amount of spent fuel stored at Vermont Yankee" exceeds "the amount derived from the operation of the facility up to, but not beyond, March 21, 2012"; (3) enjoin Defendants, permanently and pending appeal, as preempted by the AEA, from enforcing § 6522(c)(5), by bringing an enforcement action, or taking other action, to compel VY to curtail operations for failing to comply with that provision; (4) enjoin Defendants, permanently and pending appeal, from taking any action designed to, or having the effect of, forcing Vermont Yankee to curtail operations pending a decision by the PSB on Plaintiffs' petition for a CPG for continued operation of Vermont Yankee and storage of SNF derived from such operation, and any judicial review of that decision, on the ground that Plaintiffs have not yet received such a CPG; and (5) grant such other and further relief as the Court deems appropriate.

Dated: March 14, 2012

Respectfully submitted,

Entergy Nuclear Vermont Yankee, LLC and
Entergy Nuclear Operations, Inc.

By their attorneys,

s/ Kathleen M. Sullivan

Kathleen M. Sullivan (admitted *pro hac vice*)

Faith E. Gay (admitted *pro hac vice*)

Robert Juman (admitted *pro hac vice*)

Sanford I. Weisburst (admitted *pro hac vice*)

William B. Adams (admitted *pro hac vice*)

QUINN EMANUEL URQUHART

& SULLIVAN, LLP

51 Madison Avenue, 22nd Floor

New York, New York 10010

Telephone: (212) 849-7000

Fax: (212) 849-7100

s/ Robert B. Hemley

Robert B. Hemley

Matthew B. Byrne

GRAVEL & SHEA

76 St. Paul Street, 7th Floor

P.O. Box 369

Burlington, VT 05402-0369

Telephone: (802) 658-0220

Fax: (802) 658-1456

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing to the following counsel:

Bridget C. Asay, Esq.
Scot L. Kline, Esq.
Justin Kolber, Esq.
Kyle H. Landis-Marinello, Esq.

Counsel for Defendants

Dated: March 14, 2012

s/ Kathleen M. Sullivan
Kathleen M. Sullivan
(admitted *pro hac vice*)
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Fax: (212) 849-7100

Attorney for Plaintiffs