

MAR 10 2010

STATE OF VERMONT
PUBLIC SERVICE BOARD

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)

Order entered:

3/18/2010

PREHEARING CONFERENCE MEMORANDUM

On March 10, 2010, the Vermont Public Service Board ("Board") convened a prehearing conference in this proceeding. The following entities participated:

- John Marshall, Esq., and Robert Miller, Esq., Downs Rachlin & Martin PLLC for Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., (collectively, "Entergy VY");
- Sarah Hofmann, Esq., and John Cotter, Esq., for the Department of Public Service;
- Judith Dillon, Esq., for the Agency of Natural Resources ("ANR");
- James Matteau for the Windham Regional Planning Commission ("WRC");
- Sandra Levine, Esq., for the Conservation Law Foundation ("CLF");
- Raymond Shadis for the New England Coalition ("NEC");
- James Dumont, Esq., for the Vermont Public Interest Research Group ("VPIRG");
- Kenneth Picton, Esq., for Central Vermont Public Service Corporation ("CVPS");
- Jon Groveman, Esq., for the Vermont Natural Resources Council ("VNRC");
- Randall Pratt for Vermont Electric Cooperative, Inc. ("VEC");
- Benjamin Marks, Esq., for Green Mountain Power Corporation ("GMP");

- William Driscoll for Associated Industries of Vermont ("AIV"); and
- Robert Bady for the Safe & Green Campaign.

SCHEDULE

As described in our Order of February 25, 2010, this proceeding will examine several issues, specifically:

- should Entergy VY be required to cease operations at Vermont Yankee or take other ameliorative actions, pending completion of repairs to stop unpermitted releases of radionuclides, radioactive materials, and, potentially, other non-radioactive materials into the environment;
- whether good cause exists to modify or revoke the Certificate of Public Good ("CPG") that the Board issued to Entergy VY pursuant to 30 V.S.A. § 231 on June 13, 2002, in Docket No. 6545 as a result of those releases;¹ and
- whether any penalties should be imposed on Entergy VY for any identified violations of Board orders related to those releases, or any statutory violations that are within the Board's jurisdiction for imposing sanctions.

The initial stage of this investigation will focus on the first issue above — whether we can take action and what action we should take in response to the on-going releases of certain contaminants.² At the outset, the Board wants to make clear that it takes the potential consequences of any unpermitted releases of material, radioactive or non-radioactive, into the environment very seriously, especially when such releases may have adverse effect upon the public's environmental, land use, economic, and health interests. However, at this time, the Board has been presented only with generalized information and unspecific concerns. No party has presented any factual information through testimony or affidavits showing the particular harms that may be occurring, or what relief the Board could and should order to redress any such harm. Nor do we have a properly supported motion requesting that we direct Vermont Yankee to

1. At the prehearing conference, parties raised questions about the scope of the investigation as it relates to possible CPG modification or revocation. We clarify that our intent is that this docket will consider modification or revocation as it relates to the releases.

2. Obviously, to the extent that the appropriate relief for the unpermitted discharges is modification or revocation of the CPG, the initial stage of this investigation will encompass the second issue. We do not intend to undertake a broader examination of issues related to the CPG in the first stage of this proceeding.

cease or modify operation to ameliorate these harms. CLF previously filed a motion asking us to issue an order requiring Entergy VY to demonstrate why it should not be shut down; due to the absence of sufficient information on the releases and their potential effects, we opened this investigation instead. We want to stress, however, that if a party were to present us with facts demonstrating that rapid action was necessary to avoid identifiable harm to concerns within our jurisdiction, to the extent that we are not preempted by federal law, we are prepared to act quickly.

Considering the lack of detailed information on the presented releases, their potential effects and the need for action, it is appropriate that we begin by requiring Entergy VY to explain what has happened, what is occurring now, and what actions are being taken to address the releases. Thus, we are establishing a schedule that requires Entergy VY to submit, within two weeks, sworn affidavits in the form of testimony explaining the following:

- What has happened and is happening now with respect to the releases?
- Where are the discharges located (to the extent that Entergy VY knows)?
- What is being released (including any contaminants), in what amounts, and where?
- What steps is Entergy VY taking to find and fix the leaks?
- What are the impacts of the release from an environmental, land use, public health, reliability, and economic standpoint, including any potential increase in the cost of decommissioning?

Following Entergy VY's filing, other parties may engage in discovery on the testimony and file responsive testimony.

During the prehearing conference and in filings in Docket 7440, Entergy VY raised the issue of whether the Board had jurisdiction to order relief in this proceeding. We have previously recognized that certain aspects of the operation of Vermont Yankee are subject to the exclusive jurisdiction of the Nuclear Regulatory Commission. At the same time, as we explained in our Order opening this investigation, the Board retains substantial jurisdiction to regulate areas of traditional state concern. We would like parties to address the jurisdictional questions more specifically prior to hearings, once the testimony has been filed and specific requests for relief have been made.

We, therefore, adopt the following schedule. At this time, we have not set a hearing date. We will establish such dates once we receive the testimony. We have also not fixed a date for a site visit or a public hearing. For the site visit, we will determine the need and scope of a visit after we receive Entergy VY's initial testimony that allows us to better understand what is occurring. We will notify the parties of the date for the public hearing as soon as we are able to arrange a date.

March 31, 2010	Entergy VY files affidavits in the form of testimony explaining releases
March 31 – April 20	Discovery requests upon Entergy VY (rolling with 10-calendar-day responses)
May 5	Parties file testimony
May 5 – May 20	Discovery requests upon Parties' Testimony (rolling with 10-calendar-day responses)
May 18	Parties file briefs concerning scope of Board's jurisdiction

INTERVENTIONS

Several entities expressed their intent to intervene in this proceeding and two (CLF and NEC) had filed motions to intervene in advance of the prehearing conference. Because of the relationship between this Docket and Docket 7440 (in which the Board is considering Entergy VY's request for authorization to continue to operate the Vermont Yankee Nuclear Power Station ("Vermont Yankee") for an additional 20 years), the Board ruled from the bench that all parties in Docket 7440 could intervene in this proceeding without filing a formal motion to intervene. Each of those parties would still need to file a notice of appearance and letter requesting intervention. Parties making such a filing would be granted intervention in this docket on a permissive basis under Board Rule 2.209(B) with the intervention limited to the interests stated in the Docket 7440 motions to intervene.

Anyone seeking to intervene on any other terms must file a formal motion in compliance with Board Rule 2.209. Responses to motions to intervene are due within one week of the filing of the motion.

ATTORNEY'S FEES

VPIRG raised a concern about Entergy VY paying the legal and other fees of intervenors arising from Entergy VY's misrepresentations in Docket 7440. VPIRG requested that the Board order the payment of such fees. Entergy VY expressed its opposition to the payment of fees.

If a party seeks to have Entergy VY reimburse it for a portion of its costs in this docket, the party must file a motion and explain why we should grant the relief.³ In particular, if a party bases a request for costs on the misrepresentations that Entergy VY has admitted to in Docket 7440, it must demonstrate that the need for compensation for costs associated with the subject matter of the initial stage of this investigation — whether the Board should take action due to the leaks at Vermont Yankee — arises from those misrepresentations. If such a motion is filed, responses will be due within 10-calendar days of the filing.

ENERGY VY REVIEW OF DOCKET 7440 RECORD

At the status conference in Docket 7440 on January 27, 2010, the Board directed Entergy VY to review the evidentiary record and discovery responses and correct any erroneous information contained in those responses. VPIRG asserted that Entergy VY had only corrected one item to date. VPIRG requested that the Board direct Entergy VY to complete its review within 10 days.

As we observed at the prehearing conference, Entergy VY's correction of the record of Docket 7440 is an issue for that proceeding, not this one, although as VPIRG argued, Entergy VY's record of responding to requests from the Board could inform our decision as to whether to revoke or modify the CPG. Therefore, we decline to issue the Order requested by VPIRG in this docket; if VPIRG believes that immediate correction of the record in that proceeding is necessary, VPIRG may make an appropriate motion in Docket 7440. We note that Entergy VY

3. Since the status conference, WRC has submitted a filing requesting compensation.

remains under an obligation to correct the Docket 7440 record. We expect that this review will be completed before the Board takes any significant action in the relicensing proceeding. Thus, Entergy VY has an incentive to complete its review and update its responses quickly if it seeks to have the Board proceed in Docket 7440.

SO ORDERED.

Dated at Montpelier, Vermont, this 18th day of March, 2010.

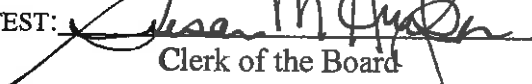
s/ James Volz)
)
s/ David C. Coen)
)
s/ John D. Burke)

PUBLIC SERVICE
BOARD
OF VERMONT

A true copy:

OFFICE OF THE CLERK

FILED: March 18, 2010

ATTEST: 
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)