

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

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.)
§§ 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)

Order entered: 1/9/2013

ORDER CLOSING DOCKET

I. INTRODUCTION

The Public Service Board ("Board") opened this docket in 2008 to consider a petition from Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (jointly, "Entergy VY"), for amendment of their Certificates of Public Good ("CPGs") and other approvals under 10 V.S.A. §§ 6501-6504 and 30 V.S.A. §§ 231(a), 248, and 254, and for authority to operate the Vermont Yankee Nuclear Power Station ("Vermont Yankee") after March 21, 2012. The Board held hearings on Entergy VY's petition in 2009.

On January 10, 2010, the Board was informed that Entergy VY had not fully disclosed the existence of certain underground pipes. In response, the Board adopted a process under which Entergy VY would take steps to correct errors in the record and parties would inform the Board when it was appropriate to hold further proceedings. No party submitted such a request.¹

In April 2011, Entergy VY filed suit in federal district court challenging certain provisions relevant to this proceeding. On January 20, 2012, the United States District Court for the District of Vermont entered a Decision and Order in *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. v. Shumlin et al*, Docket No. 1:11-cv-99 (the "District

1. The procedural history of this period is discussed in more detail in the Board's Order of March 29, 2012, at 3-4.

Court Decision"). On January 31, 2012, Entergy VY filed a Motion Seeking Issuance of a Final Decision and Order Granting CPG ("Motion for Final Decision") in this proceeding. Entergy VY asks that the Board "issue a final decision and order on Entergy VY's petition in this docket." Entergy VY states that it is filing the motion in light of the District Court Decision.

After receipt of comments from the parties, on March 29, 2012, the Board issued an Order denying Entergy VY's motion. We concluded that we did not have an appropriate record on which to base a decision. We stated:

As many of the parties including Entergy VY have noted, the existing record is stale and may include evidence that the Board is precluded from considering in light of the District Court Decision. Furthermore, the existing record includes Entergy VY's incorrect evidence regarding underground pipes. Therefore, the existing record needs to be corrected and, to the extent appropriate, updated as a result of the misinformation that Entergy VY had presented on the issue of underground pipes.²

The Board also concluded that, considering the inaccuracies in the existing record, the burden on the parties to review the existing record to determine what evidence may need to be struck based upon the District Court's decision, and the fact that the existing record was stale, the better course of action was to require Entergy VY to file an amended petition and open a new docket to consider that petition. Entergy VY made the requisite filing and the Board has now opened Docket 7862 to consider the petition.

On July 13, 2012, the Clerk of the Board issued a Memorandum requesting parties to comment on whether this docket should be closed now that the issues in this proceeding are now being addressed in Docket 7862. The Board received several comments.

II. POSITIONS OF THE PARTIES

Entergy VY asserts that the docket should remain open until Docket 7862 is resolved. Entergy VY observes that closing the docket would create unnecessary judicial and administrative inefficiencies by forcing Entergy VY immediately to challenge the Board's Order

2. Order of 3/29/12 at 5.

of March 19, 2012, instead of permitting the appeal to occur at the end of Docket 7862.³ Entergy VY contends that the appeal would essentially be an interlocutory one, since the real issues are being examined in the on-going Docket 7862. Entergy VY argues that requiring an appeal now would force the Vermont Supreme Court to rule without the benefit of the new record being developed in Docket 7862. Finally, Entergy maintains that, if the Board decides to close Docket 7440, it should reconsider its decision not to transfer the March 19 Order to Docket 7862, so as to prevent that Order from becoming final.

The Department of Public Service ("Department") states that it believes that Docket 7440 should be closed. The Department disagrees with Entergy VY's view that Docket 7440 should be suspended, stating that "allowing Docket 7440 to remain open would create significant uncertainty both in Docket 7862 and in any future appeal of either docket." However, the Department also agrees with Entergy VY that it would be reasonable to "pull the limited issues covered by the March 19 Order into Docket 7862 in order to avoid requiring the parties to simultaneously participate in an appeal on the March 19 Order in Docket 7440" while still litigating the potential issuance of a new CPG in Docket 7862. The Department contends that the issues addressed in the March 19 Order are potentially of continuing relevance to the parties in Docket 7862.

The Vermont Natural Resources Council ("VNRC") and Connecticut River Watershed Council ("CRWC") state that they have no objection to the Board closing Docket 7440, although

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3. On March 19, the Board issued an Order denying a request from Entergy VY for a Declaratory ruling that:
- (1) Pursuant to 3 V.S.A. § 814(b), the Vermont Yankee Nuclear Power Station ("Vermont Yankee") may continue operating, and storing spent nuclear fuel derived from such operation, while its petition for a new or amended certificate of public good remains pending.
 - (2) 10 V.S.A. § 6522(c)(2) does not require that the General Assembly approve the storage of spent nuclear fuel derived from post-March 21, 2012, operation of Vermont Yankee.
 - (3) 10 V.S.A. § 6501 does not apply because petitioners do not presently propose to construct or establish a new facility for the storage of spent nuclear fuel at the Vermont Yankee site.

The Board concluded that the Docket 6545 CPG (this docket considered the sale of Vermont Yankee to Entergy VY) did continue in effect due to the operation of 3 V.S.A. § 814(b) (that section provides when a timely application has been made for renewal, the existing license does not expire until the renewal application has been resolved). However, the Board also determined that certain conditions in the Docket 6545 Order and the Docket 7082 Order and CPG (Docket 7082 authorized the construction of a dry fuel storage facility) were not extended under Section 814(b). As to Entergy VY's second and third requests, the Board found that it lacked the jurisdiction to rule on Entergy VY's requests.

they reserve the right to move for the admission of any testimony and evidence in Docket 7440 into the record of Docket 7862. VNRC and CRWC represent that the Conservation Law Foundation, the New England Coalition ("NEC"), and the Vermont Public Interest Research Group concur with their statement.

III. DISCUSSION

After consideration of the parties' comments, the Board has concluded that Docket 7440 should be closed. This Docket was opened with the purpose of considering Entergy VY's petition for amendments to CPGs and other approvals required by Vermont law as it existed on the date of filing. As a result of our March 29, 2012, Order, Entergy VY's subsequent filing of an amended petition, and the Board's opening of Docket 7862 to consider that petition, there is no further action that will occur in this docket. Instead, all consideration of the issues in this Docket are now being examined in Docket 7862. In comments, no party, including Entergy VY, has identified any further action that might occur in this docket. Since nothing further remains to be resolved in this docket, we find no merit to keeping it open.⁴

In reaching this decision, we are unpersuaded by Entergy VY's arguments that we should either incorporate the March 19, 2012, Order into Docket 7862, or keep Docket 7440 open in the interest of judicial economy by not forcing Entergy VY to decide immediately whether to appeal this docket. As to the issue of judicial economy, Entergy VY has not shown how deferring an appeal, if any, of the March 19 Order is beneficial and will actually save litigation. The Board's March 19 Order involves interpretations of prior Board Orders and state law issues that are not directly before the Board in Docket 7862. In fact, the implications of the Board's decision are now before the Vermont Supreme Court in a petition by NEC and have been raised by Entergy VY to the federal District Court in a motion to enjoin NEC from its petition. Issuing a final Order in Docket 7440, thus potentially triggering an appeal, might actually facilitate resolution of

4. The only potential for further action in this docket would be if the decision of the federal District Court is overturned or otherwise altered on appeal. However, no party has presented any reason that we should keep the docket open solely because of that potential.

the other dockets by allowing the Vermont Supreme Court to directly rule on the state law question underlying the other litigation.

The Board also finds no reason to incorporate the March 19 Order into Docket 7862 to allow later litigation. That docket is about whether Entergy VY has demonstrated that operation of Vermont Yankee on a going-forward basis will promote the general good of the state. The only bearing that the March 19 Order has on the Docket 7862 issues relates to whether Entergy VY is and has been in compliance with Board Orders and Vermont law. However, in that context, the March 19 Order is no different than other orders issued by the Board related to Vermont Yankee, such as those issued in Dockets 6545 and 7082. All of these Orders speak for themselves and do not need to be incorporated into Docket 7862.

SO ORDERED.

Dated at Montpelier, Vermont, this 9th day of January, 2013.

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| <u>s/James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/John D. Burke</u> |) | |

OFFICE OF THE CLERK

FILED: January 9, 2013

ATTEST: s/Susan M. Hudson
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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.