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: 7/13/2012

ORDER RE MOTION BY WINDHAM REGIONAL COMMISSION FOR REIMBURSEMENT OF EXPENSES BY ENTERGY VY

On April 16, 2012, Windham Regional Commission ("WRC") filed a motion with the Public Service Board ("Board") requesting reimbursement of certain expenses directly related to its participation in this docket (and any subsequent related docket). WRC seeks to have Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (collectively, "Entergy VY") reimburse certain expenses WRC has incurred after August 7, 2009, or will incur in the future, from WRC's participation in such proceedings. The stated basis for WRC's reimbursement request is that the need for additional proceedings in this matter "is caused by the actions of Entergy VY."

Entergy VY filed a response to the WRC motion on May 7, 2012, opposing WRC's motion for expense reimbusement. Entergy VY argues that WRC has failed to provide any basis for a departure from the normal practice in Board proceedings in which each party bears its own legal and other expenses. Entergy VY asserts that WRC relies upon speculation rather than a chain of a causation in justifying its motion for expense reimbursement.

Although the Board has construed its statutory grant of authority to include the power to award attorney's fees in its proceedings, the Board has exercised this power sparingly and only in

exceptional circumstances.[1] Past instances in which the Board has found an award of such costs to be justified include situations involving a continued failure to provide adequate discovery responses[2] or the presentation of inaccurate evidence that directly resulted in additional costs for other parties.[3]

WRC argues that Entergy VY has caused and will continue to cause WRC to incur additional, unanticipated expenses in connection with Entergy VY's petition for a CPG. The basis for this claim is the failure of Entergy VY, in a timely manner, to assert, or to advise the other parties that it might assert, a claim that the "dual track process requiring the approval of the Public Service Board and the Vermont Legislature" was preempted by federal law. [4]

In the first instance, the direct cause of WRC's "need to relitigate the same subject under modified terms"[5] results from the federal district court decision[6] upholding certain preemption claims of Entergy VY. The federal district court decision had the effect of returning the matter to the Board for adjudication of Entergy VY's petition for a CPG.

Furthermore, unlike the cases in which the Board has allowed the award of certain additional costs resulting from a party's provision of inaccurate or incomplete information in Board proceedings, WRC is seeking reimbursement of costs because of another party's tactical choices. Essentially, WRC is seeking compensation for the tactical decision made by Entergy VY about when and how to assert a claim that the dual track process was preempted by federal law. WRC cites no precedent in which the Board or any Vermont court has awarded attorney's fees under similar circumstances based on a party's tactical choices about when and in what forum to present relevant legal arguments.

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1. Order of 6/4/10 at 10 in this docket. We discussed the legal basis for such an exercise of authority in that Order.

2. Docket 6812, *Petition of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. Pursuant to 30 V.S.A. Sec. 248 for Certificate of Public Good to modify certain generation facilities*, Order of 10/7/03 at 8.

3. Order of 6/4/10 at 10 in this docket; Docket 6860, *Petition of Vermont Electric Power Company, Inc., and Green Mountain Power Corp. for a certificate of public good authorizing VELCO to construct the Northwest Vermont Reliability Project*, Order of 9/26/06 at 5-6.

4. WRC Motion at 2-3.

5. WRC Motion at 2.

6. *Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Operations, Inc. v. Shumlin et al.*, No 1:11-cv-99, Decision and Order on the Merits of Plantiffs' Complaint (D. Vt. Jan. 19, 2012).

Although we recognize the costs and hardship to WRC if it participates in further CPG proceedings, WRC has not provided sufficient justification for deviating from the traditional rule that each party to a legal proceeding should bear its own expenses. Accordingly, WRC's motion for the reimbursement of its expenses is denied.

Dated at Montpelier, Vermont, this 13th day of July 2012.

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

OFFICE OF THE CLERK

FILED: July 13, 2012

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)