

**IN THE SUPREME COURT  
OF THE  
STATE OF VERMONT**

In Re: Public Service Board Docket No. 6545; )  
Investigation into General Order No. 45 Notice ) Docket No. \_\_\_\_\_  
filed by Vermont Yankee Nuclear Power )  
Corporation re: proposed sale of Vermont )  
Yankee Nuclear Power Station and related )  
Transactions )

**NEW ENGLAND COALITION INC.’S COMPLAINT FOR INJUNCTIVE RELIEF  
AGAINST ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY  
NUCLEAR OPERATIONS, INC. FOR DISOBEDIENCE OF AND NONCOMPLIANCE  
WITH THE PUBLIC SERVICE BOARD’S FINAL ORDER IN DOCKET 6545**

NOW COMES the New England Coalition, Inc. (“NEC”), by and through counsel Jared M. Margolis, Esq., and Brice Simon, Esq. of Breton & Simon, PLC, and pursuant to 30 V.S.A. § 15 hereby submits this complaint to the Supreme Court for relief against Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (hereinafter “Entergy”), for Entergy’s disobedience of and noncompliance with the terms and conditions of the Public Service Board’s Final Order in Docket No. 6545.<sup>1</sup> NEC requests the Court to enjoin Entergy from continuing to operate the Vermont Yankee Nuclear Power Plant (hereinafter “Vermont Yankee”) in violation of the Board’s Final Order, and to order Entergy immediately cease and desist from nuclear power generation at the Vermont Yankee facility until the Public Service Board has rendered a decision on Entergy’s application for a new or amended CPG. NEC respectfully requests that the Court expedite the review of this matter.

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<sup>1</sup> NEC is requesting relief from this Court, rather than the Public Service Board, considering the plain language of 30V.S.A. § 15, which authorizes a party to an order or decree of the public service board to, “complain to the supreme court for relief against any disobedience of or noncompliance with such order or decree.”

## INTRODUCTION

The Vermont Yankee Nuclear Power Plant is owned and operated by Entergy, subject to the terms and conditions of the CPG issued to Entergy by the Vermont Public Service Board (“Board”) pursuant to 30 V.S.A. § 231. Entergy’s current CPG was issued by the Board on June 13, 2002 in Docket No. 6545 (the “6545 CPG”). The Board additionally issued a Final Order in that Docket, regarding the sale of Vermont Yankee to Entergy (the “Sale Order”). *See* Docket 6545 Final Order and CPG attached hereto. On March 3, 2008, in Docket No. 7440, Entergy applied to the Board for a new or amended CPG, seeking authorization to continue operating Vermont Yankee after March 21, 2012, when the Docket 6545 CPG expired for plant operations by its express terms.<sup>2</sup> Following Entergy’s appeals to the Vermont District Court, Docket No. 7440 was closed and the Board opened a new Docket, Docket No. 7826, to consider Entergy’s application for continued operation of Vermont Yankee. The Board has not yet ruled on Entergy’s application for a new or amended CPG to continue to operate the plant after March 21, 2012.

Entergy has argued before the Board that it may continue to operate Vermont Yankee pending the Board’s review of its application for a new or amended CPG, pursuant to 3 V.S.A. § 814(b).<sup>3</sup> According to Entergy, the CPG issued in Docket 6545 has not expired, and remains in full force and effect pending the Board’s review of Entergy’s application for a new or amended

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<sup>2</sup> None of Entergy’s requests currently pending before the Board would authorize it to operate Vermont Yankee after March 21, 2012 contrary to the Sale Order.

<sup>3</sup> When 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, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court. 3 Vt. Stat. Ann., tit. 3, Sec. 814(b).

CPG for continued operation. Entergy has maintained that 3 V.S.A. 814(b) not only authorizes continued operation under the previously-issued CPG, but also under the Sale Order. The Board, however, has ruled that the Sale Order issued by the Board in Docket No. 6545 contains a condition (“Condition 8”) that expressly prohibits operation of Vermont Yankee after March 21, 2012, “[a]bsent issuance of a new Certificate of Public Good or renewal of the Certificate of Public Good. . . .” *See* Docket No. 7440, Order of 3/19/12 at 18 (the “March 19 Order”) (quoting Docket No. 6545, Order of 6/13/02 at 159) (attached hereto). Entergy moved for a declaratory judgment from the Board regarding the applicability of 3 V.S.A. § 814(b) to Condition 8, and the Board ruled that this condition is not a license subject to that statutory provision, and that “continued operation of Vermont Yankee after March 21 without a new or renewed CPG would violate that condition of the sale.” *Id.*

Thereafter, on May 29, 2012, Entergy filed a Motion pursuant to Rule 60(b) to Amend Condition 8 of the Sale Order in Docket 6545.<sup>4</sup> On November 29, 2012, the Board issued an Order Re: Motion to Amend, denying Entergy’s Motion. Therefore, Condition 8 of the Sale Order, which prohibits operation of the Vermont Yankee Nuclear Power Station after March 21, 2012, without Board approval, remains in effect. Docket Nos. 6545, 7082, 7440 Order Re Motion to Amend of 11/29/12 (“November 29 Order”) (attached hereto). The Board’s November 29 Order further found that the arguments and statements made by Entergy itself, as well as the language of the Sale Order (including the Docket 6545 MOU entered into by Entergy

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<sup>4</sup> The Motion to Amend also sought modification of the Board’s April 26, 2006, Order and Certificate of Public Good (“CPG”) in Docket 7082 (the “Dry Fuel Storage” or “DFS” Order and CPG); however, that issue is the subject of an injunction issued by the District Court, and is not, therefore, a basis on which NEC requests relief herein.

and incorporated into the Sale Order)<sup>5</sup> are “unequivocal” that “Entergy VY must both apply for and receive a CPG for operation after the March 21 deadline.” November 29 Order at 18 (emphasis added). The Board stated in the November 29 Order that:

Under Paragraph 12 of the MOU, Entergy VY entered into a binding contract with the Department and other parties not to operate after March 21 absent Board authorization. Entergy VY has not challenged the validity of this commitment in its federal litigation. Thus, any of those parties could seek specific performance of the Paragraph 12 obligations at any time which, if granted, would bar operation after March 21, 2012.

*Id.* at 19. NEC, which applied for and was granted party status in Docket 6545, now respectfully requests that this Court enforce the provisions of the Sale Order and the MOU incorporated therein.<sup>6</sup> *See* 30 V.S.A. § 15 ; *and McFeeters v. Parker*, 113 Vt. 139 (1943) (“The enforcement of such orders of the public service commission is left to this court.”)

The Board’s November 29 Order confirms that Entergy’s continued operation of the VY Station at this time, without having obtained a CPG to authorize operation after March 21, 2102, violates the Sale Order, and the MOU incorporated therein. The Board’s November 29 Order further confirms that this is the result of choices and strategies that Entergy itself has employed, and upon representations made by Entergy to the Board,<sup>7</sup> which were relied upon in issuing the

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<sup>5</sup> The Board made clear in the November 29 Order “that the approval of the sale transaction and the issuance of a CPG to expire on March 21, 2012, relied upon Entergy VY’s MOU commitments”:

ENVY also agrees, through the MOU, that the Board has complete jurisdiction to decide whether to renew ENVY and ENO’s Certificates of Public Good (“Certificate”) if ENVY seeks to extend its operating license past the expiration of its present term. This clarification of authority and the contractual commitment with the Department (on which our approval relies) provide assurances to Vermont that ENVY and ENO cannot thwart state review if ENVY plans to operate Vermont Yankee beyond 2012.

November 29 Order at 16 (quoting Docket 6545, Order of 6/13/02 at 9).

<sup>6</sup> *See* Paragraph 3 at Page 191 of the Sale Order, approving the MOU as part of the sale of the VY Station to Entergy.

<sup>7</sup> For example, the Board noted that “[t]his view was augmented by Entergy VY’s brief, which stated: ‘In its prefiled testimony and in the MOU, ENVY and ENO have committed that they *will not attempt to*

Sale Order and Condition 8 therein, which Entergy “actively agreed to [] as a condition of the sale.” November 29 Order at 18-19. Whereas the Board found no basis for altering these provisions, Entergy clearly does not have authority to operate the plant post March 21, 2012 absent a new CPG, which has not been issued.

In violation of the unambiguous findings of the Board, Entergy has continued to operate the Vermont Yankee plant after March 21, 2012 and after the November 29 Order was issued. *See* Affidavit of Brice Simon, Esq. attached hereto and incorporated herein. This direct violation of the Sale Order issued by the Board in Docket 6545, as well as the Board’s March 19 and November 29 Orders, has been willful and NEC therefore respectfully requests that this Court enforce the terms of the Board’s Sale Order by issuing an injunction prohibiting Entergy from continuing to operate the plant until a decision regarding a new or amended CPG is issued by the Board.

#### ARGUMENT

I. Entergy is operating Vermont Yankee in violation of the Sale Order in Docket 6545

The Public Service Board’s Final Order in Docket No. 6545, approving the sale of Vermont Yankee to Entergy, contained a condition stating that:

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.

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*operate the VY Station beyond its current term without obtaining an extension or renewal of its CPG from the Board.”* November 29 Order at 18 (emphasis in original). Entergy’s Proposed Findings in Docket 6545 similarly stated that “ENVY agrees to a condition in an order issued by the Board approving this sale to the effect that the Certificate of Public Good (CPG) issued by the Board will be limited to a term of years ending with the VY Station's current license termination date (March 2012) and that operation of the VY Station beyond its license termination date will be allowed only if the CPG has been renewed by the Board.” *Id.*

Docket No. 6545, Order of 6/13/02 at 159. The Public Service Board has determined that this provision is a “condition, separate from the CPG, that expressly prohibits operation of Vermont Yankee after March 21, 2012,” and which pertained to “the Board’s Section 109 approval of the sale of Vermont Yankee... and not the approval of a continuing activity (which is, instead, addressed by the Docket 6545 CPG).” March 19 Order at 16. The Board therefore determined that because this “prohibition on operation past March 21, 2012, without a new or renewed CPG is a condition of the approval of a discrete transaction – the sale of Vermont Yankee – and not of a continuing activity, 3 V.S.A. § 814(b) does not serve to excuse compliance with that condition.” *Id.* at 18. The Board’s analysis is sound, and this Court should give deference to its determination. *Gasoline Marketers of Vt., Inc. v. Agency of Natural Res.*, 169 Vt. 504, 508, 739 A.2d 1230, 1233 (1999) (“[A]bsent a clear and convincing showing to the contrary, decisions made within expertise of administrative agencies are presumed to be correct, valid, and reasonable.”).

As set forth above, the Board’s March 19 and November 29 Orders demonstrate that continued operation of Vermont Yankee at this time violates an express condition of the Sale Order. Entergy subsequently moved for modification of that Order, which has been denied as discussed above. *See* November 29 Order. Entergy has not been issued a new CPG, nor has it received a renewal of its current CPG. Entergy is therefore operating the plant in willful disregard of the Sale Order issued by the Board in Docket 6545. Affidavit of Brice Simon, Esq.

Pursuant to 30 V.S.A. § 15, “[a] party to an order or decree of the public service board or the board itself, or both, may complain to the supreme court for relief against any disobedience of or noncompliance with such order or decree.” NEC was a party to the Board’s review of Entergy’s application for a CPG in Docket No. 6545, and therefore may properly bring an action

before this Court to have the Court enforce the terms of the Sale Order issued in that docket, and for relief against Entergy's disobedience and noncompliance with the provisions therein. *See* Docket 6545 Order at Appendix B (noting that NEC is a party to that Docket).

Entergy's current operation of Vermont Yankee is now in direct violation of the above-cited condition in the Docket 6545 Final Order, as well as the MOU incorporated into the Docket 6545 Order. *See* November 29 Order at 14-15. It is, furthermore, entirely egregious for Entergy to continue to operate the plant in violation of the Sale Order, given that Entergy sought a declaratory judgment, and was specifically told by the Board that continued operation after March 21 absent a new or amended CPG would be in violation of the Sale Order,<sup>8</sup> and similarly continued to operate the plant following the Board's November 29 Order, which confirmed Entergy's violations. In fact, the Board found in its November 29 Order that:

Entergy VY could have avoided hardship by complying with the Board's Order. Entergy VY also could have sought reconsideration (rather than waiting several months before filing the instant motion). Or Entergy VY could have sought immediate, interlocutory review of the Board's decision and a stay from the Board pending such review. Entergy VY chose none of these options. Instead, it voluntarily elected to continue operating Vermont Yankee even after the Board affirmatively stated that Condition 8 of the Sale Order and the applicable conditions in the DFS Order and CPG were not extended by 3 V.S.A. § 814(b).

November 29 Order at 28 (emphasis added). NEC respectfully requests that the Court take all appropriate action to enforce the unambiguous terms of the Board's Final Order in Docket 6545, and prevent Entergy from continuing to operate the plant in direct violation of the Order.

## II. Conclusion

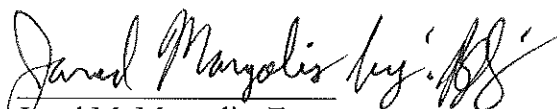
The Court should find that Entergy is operating the plant in direct violation of Condition 8 of the Sale Order in Docket 6545, and the express terms of the MOU incorporated therein, and

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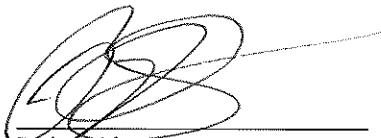
<sup>8</sup> *See* Docket No. 7440, Order of 3/19/12 at 18.

enjoin Entergy from continuing to operate the Vermont Yankee plant until the Board has rendered a decision on Entergy's application for a new or amended CPG.

Dated at Stowe, Vermont this 5<sup>th</sup> day of December, 2012.



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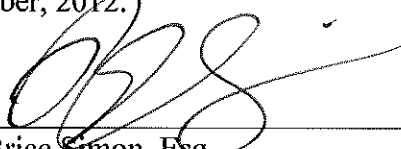
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**AFFIDAVIT OF BRICE SIMON, ESQ.**

NOW COMES Brice Simon, Esq., co-counsel for the New England Coalition (“NEC”), a party to Public Service Board Docket 6545, and hereby swears under oath to the following:

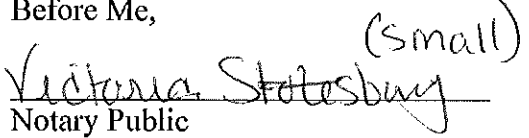
1. I have today investigated whether the Vermont Yankee Nuclear Reactor is operating, by accessing the Federal Nuclear Regulatory Commission reactor status website at: <http://www.nrc.gov/reading-rm/doc-collections/event-status/reactor-status/ps.html#r1>.
2. Attached hereto and incorporated herein is the list of Region 1 reactors, which includes the Vermont Yankee reactor, and shows that the Vermont Yankee reactor is presently operating at 100%.
3. Based upon the foregoing, the Vermont Yankee nuclear reactor is continuing to operate at this time.

DATED at Stowe, Vermont this 4<sup>th</sup> day of December, 2012.)

By:   
\_\_\_\_\_  
Brice Simon, Esq.

STATE OF VERMONT )  
LAMOILLE COUNTY ), SS.

On the 4<sup>th</sup> day of December, 2012, personally appeared Brice Simon, Esq., and he swore to the truth of the foregoing, based upon his own knowledge and information.

Before Me,  
 (small)  
\_\_\_\_\_  
Notary Public  
My Comm. Exp.: 2/10/15

## Current Power Reactor Status Report for December 4, 2012

UNEVALUATED INFORMATION PROVIDED BY THE FACILITY

On this page:

- Region 1 Reactors
- Region 2 Reactors
- Region 3 Reactors
- Region 4 Reactors

### Region 1

 TOP

Unit	Power
Beaver Valley 1	100
Beaver Valley 2	100
Calvert Cliffs 1	100
Calvert Cliffs 2	100
FitzPatrick	100
Ginna	100
Hope Creek 1	100
Indian Point 2	100
Indian Point 3	100
Limerick 1	100
Limerick 2	100
Millstone 2	100
Millstone 3	100
Nine Mile Point 1	37
Nine Mile Point 2	100
Oyster Creek	74
Peach Bottom 2	100
Peach Bottom 3	100
Pilgrim 1	100
Salem 1	100
Salem 2	100
Seabrook 1	100
Susquehanna 1	100
Susquehanna 2	100
Three Mile Island 1	100
Vermont Yankee	100

### Region 2

 TOP

Unit	Power
Browns Ferry 1	17
Browns Ferry 2	100
Browns Ferry 3	100
Brunswick 1	100
Brunswick 2	100