

**Rick Smith  
Remarks  
April 18, 2011**

**Good morning and thank you for joining the call.**

**Today, two of Entergy Corporation's subsidiaries, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Incorporated, filed a lawsuit in the United States District Court for the District of Vermont.**

**The lawsuit seeks a judgment to prevent the state of Vermont from forcing the Vermont Yankee nuclear generating facility to shut down on March 21, 2012.**

**This date marks the end of the plant's original 40-year operating license issued by the Nuclear Regulatory Commission.**

**Litigation was by far our least favored approach. But it is clear our disagreement with the State of Vermont involving the scope of its authority over Vermont Yankee cannot be resolved by negotiations between the two parties.**

**Putting this dispute before a federal judge is the appropriate and responsible way to resolve this disagreement. Our filing today does just that.**

**Our lawsuit follows the NRC's March 21 issuance of Vermont Yankee's operating license for another 20 years.**

**As we have pointed out repeatedly, the NRC's action came after a thorough and exhaustive five-year safety and environmental review of the plant.**

**I have personally been involved for over two years trying to find a constructive solution that would gain support from:**

- the Governors of Vermont,**
- the Vermont General Assembly,**
- the Vermont Electric Utilities,**
- the Department of Public Service,**
- and**
- The Vermont Public Service Board.**

**Our attempt to find a constructive solution began with our Certificate of Public Good filing on March 3, 2008 to operate Vermont Yankee beyond March 21, 2012.**

**That petition, as submitted, was supported by the sworn testimony of ten witnesses.**

**We believe the evidence submitted by Entergy demonstrates that the continued operation of Vermont Yankee would serve the public good in Vermont and the New England Region.**

**The Board has taken some administrative steps in the case, including holding hearings, but it is not permitted to act on the CPG application without first being given authority to do so from the Vermont legislature.**

**This is based on a law passed by the General Assembly in 2006 – Act 160 which came into force four years after we signed the purchase memorandum of understanding.**

**That 2006 law took control of the plant's future away from the Public Service Board, an expert decision-maker, independent of legislative control.**

**Instead, it placed Vermont Yankee's fate in the hands of political decision-makers, namely the state General Assembly, who could deprive Entergy's two subsidiaries of the opportunity to operate the Vermont Yankee Station beyond March 21, 2012, for unsupported or arbitrary reasons.**

**During the last legislative session, the General Assembly voted 26 to four against allowing the Board to further consider Vermont Yankee's CPG application.**

**This is not what we signed up for in 2002.**

**Despite our disagreement with the 2006 law, we took a number of additional steps to achieve state approvals and to allow the continued operation of Vermont Yankee without resorting to litigation.**

**Beginning in 2009, Entergy offered to negotiate with the Vermont Department of Public Service on a variety of parameters for the eventual decommissioning of Vermont Yankee, including the establishment of a "date certain" for the commencement of decommissioning activities. The "date certain" was to be earlier than the 60-year SAFSTOR period permitted by NRC regulations.**

**More than two years ago, we began negotiations with the Vermont utilities that ultimately resulted in an offer of a 20-year purchase power agreement at a price of \$49 per megawatt hour for the first year, followed by a market-adjusted formula that ensured the utilities preferential wholesale rates over the life of the contract.**

**In 2010, we explored the potential sale of Vermont Yankee, in an effort to separate adverse public opinion about Entergy from the reality of the plant's excellent performance.**

**The plant's superior operational record attracted interest from potential buyers. But we were unable to reach commercial terms with any party because of the political uncertainty in Vermont; more specifically, Vermont officials' stated intent to shut down the plant.**

**Unfortunately, these efforts did not persuade the governor or the General Assembly.**

**In a meeting I had with the Governor on March 30th, he reiterated his firm opposition to the operation of Vermont Yankee after March 21, 2012.**

**We believe we have made every reasonable effort to accommodate the state of Vermont and its officials while allowing for the continued operation of Vermont Yankee, an outcome that benefits all stakeholders, including Vermont consumers and the approximately 650 men and women who work at the plant.**

**Despite the fact that Vermont Yankee is important to the reliability of the New England electric transmission grid, emits virtually no greenhouse gases, and provides more than \$100 million in annual**

**economic benefits to the state of Vermont, it has been made clear that the governor and many in the General Assembly have concluded that the plant should be shut down.**

**This has left us with no other choice but to seek relief in the court system.**

**No company likes to take legal action, particularly against a state in which it operates.**

**I can tell you that we made this decision after much thought, consultation and examination of all possible options. We came to one conclusion: we had no choice. We believe that the State of Vermont changed the rules on us.**

**When we bought the plant, Entergy signed a Memorandum of Understanding with the Department of Public Service. And we agreed that if we sought a new license from the NRC, we would also seek a new Certificate of Public Good from the DPS and ultimately the Public Service Board.**

**You will hear that Entergy is going back on its word and breaking the deal it made in the 2002 Memorandum of Understanding signed by Entergy Nuclear Vermont Yankee, Entergy Nuclear Operations and the**

**Vermont Department of Public Service. This is not true. We believe the General Assembly changed the rules and left us with no other choice.**

**We had a judgment call to make: seek relief in the courts or shut the plant down at the end of the current license.**

**In some ways, shutting down the plant might have been (the) less complicated option, but it is not the right option.**

**Here's why:**

**First, we firmly believe in the benefits of nuclear generation and its affordable, clean and safe electricity.**

**Second, we have 650 employees who work at Vermont Yankee. Through their efforts, the plant has consistently been among the top performing nuclear plants in the country, highlighted by the consistently high marks the plant gets from the NRC and the nuclear industry's independent review organization.**

**In addition, Vermont Yankee employees enabled the plant to achieve 532 days of continuous operation prior to the last refueling outage.**

**This was the second breaker-to-breaker run in a four-and-one-half year period. Shutting the plant down would be turning our backs on our employees' hard work and dedication.**

**Third, polling research tells us that more Vermonters want the plant to stay open than want it to close.**

**While we do not believe that the operation of nuclear plants should be determined by public opinion polls, we nonetheless think this is an important point because some will suggest that filing this lawsuit ignores the will of the people. Our actions today support the many Vermonters who want the plant to continue operating.**

**Fourth, through the Vermont Energy Partnership, more than 95 major employers, trade organizations, electric utilities and labor groups support the continued operation of the plant.**

**These are groups and businesses that understand the impact that affordable, reliable electricity can have on the bottom line and the general well-being of the state.**

**Finally, this issue is not just about Vermont. Retiring the plant would have an impact on the cost and reliability of service in New Hampshire and Massachusetts, which receive power from Vermont Yankee in the wholesale market. Those states deserve consideration in this discussion.**

**For all of these reasons, we felt compelled to seek relief in the courts, not just for the sake of our shareholders, but also for the sake of**

**our employees, supporters and the citizens of Vermont who want low-cost and virtually emission-free electricity.**

**As outlined in the lawsuit we filed today, our claims are based in part on the following legal principles:**

**First, the Atomic Energy Act Preemption under the Supremacy Clause of the U.S Constitution.**

**The U.S. Supreme Court held in 1983 in a case involving Pacific Gas & Electric that a state has no authority over:**

**(1) nuclear power plant licensing and operations**

**or**

**(2) the radiological safety of a nuclear power plant.**

**In violation of these legal principles, Vermont has asserted that it can shut down a federally licensed and operating nuclear power plant, and that it can regulate the plant based upon Vermont's safety concerns.**

**Second, Federal Power Act Preemption and the Commerce Clause of the U.S. Constitution. Under these legal principles, Vermont is prohibited from conditioning post-March 2012 operation of the Vermont Yankee Station on the plant's agreement to provide power to Vermont utilities at preferential wholesale rates.**

**The Federal Power Act preempts any state interference with the Federal Energy Regulatory Commission's exclusive regulation of rates in the wholesale power market.**

**The Commerce Clause of the U.S. Constitution bars a state from discriminatory regulation of private markets that favors in-state over out-of-state residents.**

**Regarding refueling of Vermont Yankee, no decision has been made at this point. We have until the early July timeframe to make a decision on refueling, and that general timeline has not changed.**

**Finally, let me close by saying we feel we have made every effort to find a resolution without resorting to litigation – but we were not successful.**

**After exhausting all those avenues, we reluctantly decided to seek relief in the federal court system.**

**I want to thank you for joining us this morning and for listening to these remarks in their entirety.**