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Judge rules against state, says Entergy can continue to operate Vermont Yankee **By: Anne Galloway**

U.S. District Court Judge J. Garvan Murtha has ruled that Entergy can continue to operate the Vermont Yankee Nuclear Power Plant in Vernon past a March 21 state-mandated shut down date.

In the decision handed down on Thursday, Murtha struck down several state laws, one of which (Act 160) prohibits the Louisiana-based corporation from running the aging nuclear plant beyond its current 40-year license without legislative approval. The other (Act 74) requires Entergy to obtain permission from the General Assembly to store high level nuclear waste at the site.

In February 2010, the state Senate voted to deny Entergy an opportunity to seek a 20-year renewal of its license to operate Vermont Yankee from the Public Service Board.

Download a copy of the [Murtha Decision on Entergy v. Shumlin et. al.](#)

Murtha wrote that the Atomic Energy Act preempts Vermont law. Consequently, the state cannot bring an enforcement action against Entergy, he wrote.

“Plaintiffs have demonstrated they would be irreparably harmed by Vermont Yankee’s closure under preempted laws if Defendants enforced Act 160, or the preempted provision in Act 74, or if Defendants conditioned approval of a petition for continued operation on the existence of a below-market power purchase agreement with Vermont utilities,” Murtha wrote.

The Vermont Public Service Board will now decide whether to issue a certificate of public good to Entergy that would allow the plant to continue operation for an additional 20 years.

Entergy filed a lawsuit against the State of Vermont in April of last year, a month after the Nuclear Regulatory Commission extended VY’s operating license for another 20 years in March 2011.

Entergy Corp. attorneys argued that nuclear safety was the motivation for the Vermont Senate’s 2010 vote.

Entergy also claimed that the Vermont Legislature regulated the plant on nuclear safety grounds through a careful and planned use of “code words.” Legislators substituted words and phrases like “economics,” “reliability,” and “public safety” to circumvent the NRC’s authority over all things nuclear safety, Entergy’s lead attorney Kathleen Sullivan told Murtha during the trial last fall.

The state's attorneys said officials in Vermont were motivated by a deep mistrust of Entergy and misstatements by employees about the existence of underground pipes that leaked tritium into groundwater.

The Vermont Attorney General also cited failed negotiations over a power purchase agreement and over plans for an energy future founded on renewable-energy sources.

Reaction to the decision was swift.

Gov. Peter Shumlin, who led the Senate in the vote against the relicensure in 2010 when he was President Pro Tempore, was personally listed as a defendant in the suit.

The governor said he was "very disappointed" in the ruling.

"Entergy has not been a trustworthy partner with the state of Vermont," Shumlin said in a statement. "Vermont Yankee needed legislative approval 40 years ago. The plant received approval to operate until March, 2012. I continue to believe that it is in Vermont's best interest to retire the plant. I will await the Attorney General's review of the decision to comment further on whether the state will appeal."

House Speaker Shap Smith and President Pro Tem John Campbell emphasized that the state still has a say in the fate of the aging nuclear power plant.

"Under this decision, Vermont Yankee remains required to have a Certificate of Public Good issued by the Public Service Board in order to operate," they said in a statement. "We expect the Public Service Board will consider the issue of continuing operation in its pending docket. The state will look closely at the decision to see what boundaries the Court has set for the issuance of a Certificate of Public Good and will hear from all parties to ensure that the best interests of Vermont and its citizens are represented in this process."

Brad Ferland, president of the Vermont Energy Partnership, a business association that cites Entergy as a member, said the decision was "well-reasoned."

"The judge's decision is good news for Vermont," Ferland wrote in a statement. "We hope today's ruling will be the basis for fresh thinking and reflection on the very positive role the plant can and should play in the state's future. We encourage policy makers to pursue this course instead of protracted, expensive, divisive legal battles."