Nuclear Plant May Not See Smooth Sailing

DAVE GRAM,Associated Press

MONTPELIER, Vt. (AP) — It looked a month ago like the Vermont Yankee nuclear plant was in the clear for continued operation after a federal judge ruled against the state's efforts to shut it down.

Judge J. Garvan Murtha of the U.S. District Court in Brattleboro had ruled Vermont laws pointing toward a shutdown for the state's lone reactor unconstitutional or pre-empted by federal law.

But now the Vernon reactor's owner, New Orleans-based Entergy Corp., is saying through its lawyers that it and the judge may have missed a legal trap, one that could force the plant to shut down on its 40th birthday, barely three weeks from now.

So the fight over Vermont Yankee's future rages on.

Entergy lawyers filed a series of court papers Monday night. One was a notice of appeal of Murtha's Jan. 19 order to the 2nd U.S. Circuit of Appeals in New York. The company is expected to flesh out its reasons for appealing a largely favorable order later. Lawyers following the case say the only issue on which it lost was on its argument that, because Vermont Yankee will be selling all of its electricity out of state for the foreseeable future, the state has little or no regulatory authority over it.

Another Entergy legal filing was of a more immediate nature. The company went back to the District Court, asking Murtha to reopen the case he heard during a three-day trial in September just enough to block the possibility that the state might try to close the plant by barring it from storing highly radioactive spent nuclear fuel produced by the reactor after its original shutdown date of March 21.

Entergy bought the plant from a group of New England utilities that had owned it previously in 2002, with 10 years left on its initial operating license. The company had three goals: increase Vermont Yankee's power output by 20 percent, to 605 megawatts; get permission to build new storage capacity for highly-radioactive spent nuclear fuel, since the plant's existing capacity was running out; and win a 20-year license extension by 2012.

Entergy got the power boost and the waste expansion by mid-decade. But in 2005, the Vermont Legislature made Vermont the only state in the country saying that before a nuclear plant got a license extension, lawmakers had to approve before the question went to the Public Service Board, which regulates utilities.

The question came to a head in early 2010. In January, it was revealed that radioactive tritium was leaking from underground pipes in the plant into soil and

groundwater, and that plant officials had misled state lawmakers and regulators by saying the plant didn't have the sort of underground piping that carried tritium. In February, with the plant at its political nadir in the state, the Vermont Senate voted 26-4 against letting the Public Service Board grant the permit for continued operation of Vermont Yankee. Because the Senate killed it, the measure was never taken up by the House.

The federal Nuclear Regulatory Commission gave the plant a 20-year extension of its federal license in March of 2011. Entergy filed suit against the state a month later for declining to follow the NRC's lead.

When Murtha ruled for Entergy last month, he essentially told the Legislature to butt out and let the Public Service Board decide whether to issue the new state permit. Part of the board's response came last week, when it asked a series of questions, some relating to the storage of nuclear waste after March 21.

The board noted that when it allowed Entergy to expand its waste storage, it gave the company permission to store only spent nuclear fuel that was generated from operations up to March 21, 2012.

"Does Entergy VY plan to operate past March 21, 2012, if the Board has not yet issued a (state permit)? If so, what does Entergy VY plan to do with spent fuel generated as a result of such operation?" a board memo says.

That and similar questions prompted Entergy's filing in Murtha's court Monday night, the company said.

The board memo containing the questions raises a "palpable risk" that the lack of permission for ongoing waste storage "requires Vermont Yankee to shut down on March 21, 2012," the company's lawyers said.

They asked Murtha for an amended order blocking this outcome.

"Based on the (board's) questions, we made a number of filings asking the Court to provide clarity for all parties regarding certain aspects of Judge Murtha's decision and its impact on the continued operation of Vermont Yankee while the (board) considers our pending application for a Certificate of Public Good," company spokesman Michael Burns said in a statement.

Sandra Levine, a lawyer with the environmental group Conservation Law Foundation, said the company's stance violated an earlier promise it had made to abide by the board's decisions on waste storage post-2012.

"Entergy continues its streak of broken promises," Levine wrote in an email. "Entergy now seeks to force Vermont to store additional spent fuel without approval and contrary to Entergy's own agreement with the State."

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