Fight over VT Nuclear Plant Oversight in NY Court

LARRY NEUMEISTER,Associated Press

NEW YORK (AP) — The question of whether Vermont's only nuclear plant can continue operating without the approval of state regulators goes before a federal appeals court Monday in a dispute that has gained increasing attention nationally about the boundaries of federal authority over a controversial power source.

The New Orleans-based Entergy Nuclear Operations Inc. brought the issue to court. The utility won a decision last January in which a federal judge in Brattleboro, Vt., ruled that safety issues are the sole responsibility of the federal Nuclear Regulatory Commission. In 2011, that panel had extended the license for Entergy's Vermont Yankee plant by 20 years. Without the judge's ruling, the plant could have been forced to close on March 21, when state approval expires.

The 2nd U.S. Circuit Court of Appeals in Manhattan took up the case on an expedited schedule, and a ruling from the three-judge panel that will hear arguments Monday could be expected within weeks rather than months.

At stake is a plant that opened in 1972 and supplies one-third of the electricity consumed by Vermont, with about 45 percent of the power generated at the plant being shipped to electric companies in neighboring states.

In written arguments submitted before Monday's hearing, lawyers for Vermont officials said that even the NRC acknowledged when it relicensed the plant that state regulators will "ultimately decide" whether the plant continues to operate. The lawyers noted that the dispute originates in a state that has become "a national leader in promoting energy efficiency" as it has for decades engaged in moves away from oil, gas and nuclear to such renewable energy sources as solar, wind and biomass.

"Consistent with the state's long-term energy goals, Vermont long planned for Vermont Yankee's scheduled retirement," the lawyers wrote.

They said the federal judge in Vermont, J. Garvan Murtha, overstepped his authority because the Supreme Court has always said states can decide whether nuclear power plants operate within their borders and are only pre-empted from regulating matters of radiological safety.

In papers of their own, lawyers for Entergy said the state was trying to circumvent federal authority by claiming there were non-safety issues at stake in the dispute, even though "Vermont legislators furnished the district court with a virtual cherry orchard of statements evincing that 'safety is the prime concern.'"

They said a ruling in Vermont's favor would enable state legislatures to shut down plants by merely mentioning a non-safety purpose.

"The judgment should be affirmed so that Vermont's safety concerns do not interfere with the NRC's thoroughly considered determination, after five years of study, that Vermont Yankee should be re-licensed to operate through 2032," Entergy's lawyers said.

In an amicus brief, several other states argued in support of Vermont officials, saying Murtha's ruling would "severely limit the scope of states' traditional authority to regulate power utilities, including nuclear power plants." States and ultimately taxpayers must often absorb costs associated with the decommissioning of a nuclear power plant or step in if the operator of a nuclear plant goes bankrupt or collapses, the brief noted.

The federal government, the brief said, is responsible for safety but states are responsible for all other policy choices that relate to the operation and authorization of nuclear facilities. The brief was filed on behalf of New York, Connecticut, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire and Utah.

A similar view was offered in an amicus brief filed by the National Conference of State Legislatures, which said Murtha had inappropriately cited comments legislators had made about safety to justify his ruling.

"Left uncorrected, this type of misguided judicial inquiry will inevitably chill state legislatures' willingness to debate policy issues robustly and to solicit a variety of viewpoints about proposed legislation openly," it said.

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