Entergy cites federal laws in Vt. Yankee hearing

DAVE GRAM - Associated Press - Associated Press

The Public Service Board routinely considers the economic impact of Vermont's utilities, but lawyers for Vermont Yankee nuclear plant argued Monday that federal laws that bar the board from considering safety issues would also apply to any economic issues that might arise if there were an accident at the Vernon reactor.

The comments from lawyers for New Orleans-based Entergy Corp., seeking a new state permit to keep Vermont Yankee running, came on the first of five days of technical hearings scheduled during the next two weeks.

The company is seeking the new state certificate of public good — required along with the federal license it got from the Nuclear Regulatory Commission in 2011 — against the backdrop of efforts by the administration of Gov. Peter Shumlin and the Legislature to force the state's only nuclear plant to shut down.

Vermont Yankee originally was scheduled to cease operations last March 21, its 40th birthday. But it is one of dozens of nuclear plants around the country to have sought and won permission from the NRC to continue to run for an additional 20 years.

Vermont has balked at going along, with the Legislature blocking the Public Service Board from granting the state permit Entergy and Vermont Yankee also need.

Entergy sued in federal court, and won a round last year, when Judge J. Garvan Murtha of the U.S. District Court in Brattleboro said the Vermont laws were motivated amid concerns over nuclear safety, something that federal law places in the sole jurisdiction of the NRC.

That prompted a reopening of consideration by the board, which could rule later this year or in early 2014.

At Monday's hearing on Entergy's request for a new state permit, company lawyers sought to take that idea of federal pre-emption and run with it, telling the board that it should avoid considering not just the economic impact of a possible nuclear accident, but that the board also should not consider the impact that hosting a nuclear plant might be having on the state's tourism industry.

Burlington lawyer Robert Hemley told the three-member board the only reason the presence of a nuclear plant might harm tourism is if the public develops fears about nuclear safety — a subject Vermont is barred from considering.

"Discussion about tourism is a pre-empted area. ... We feel the entire area is off-limits for this board," Hemley said.

Entergy's push for pre-emption appeared to run counter to an agreement it entered with the state when it bought Vermont Yankee in 2002 from the group of New England utilities that had owned it previously.

Under that memorandum of understanding, Entergy and the state agreed "to waive any claim each may have that federal law pre-empts the jurisdiction of the board" to decide Vermont Yankee's post-2012 future.

Entergy lawyer Sanford Weisburst argued later that the board would be hard-pressed to find a plausible, non-safety reason to deny Vermont Yankee a new permit.

Much of the lawyering came with economist Richard Heaps on the stand. Heaps, of the Westford-based firm Northern Economic Consulting, has done three studies of the economic impacts of Vermont Yankee, which employs more than 600 workers and is one of the state's largest taxpayers.

Robert Kirsch, a lawyer for the state Department of Public Service, questioned Heaps about whether the continued operation of Vermont Yankee might slow the state's push to develop renewable energy sources like wind or biomass.

Weisburst objected to that line of questioning as well.

Vermont Yankee's electricity is not provided directly to any of the state's utilities; instead it's sold into the New England regional power grid. Nothing about Vermont Yankee's continued operation would block Vermont from using as much renewable energy as it wished, he said.

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