

H.436

An act relating to decommissioning funds of nuclear energy generation plants

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 30 V.S.A. § 107 is amended to read:

§ 107. ACQUISITION OF CONTROL OF ONE UTILITY COMPANY BY  
ANOTHER; SUPERVISION

(a) No company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the public service board, or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the public service board. Nothing in this section shall be deemed to affect the direct or indirect acquisition of a controlling interest in a company as defined in subdivision 501(3) of this title. The direct acquisition of the voting securities of a company defined in subdivision 501(3) shall continue to be regulated pursuant to section 515 of this title.

(b) Any company seeking to acquire such a controlling interest shall file a petition with the public service board which describes the acquisition and sets forth the reasons why such an acquisition should be approved. The public service board shall give notice of the petition to the department of public service and other interested persons, and may conduct a hearing. The board

may grant such approval only after due notice and opportunity for hearing and upon finding that such an acquisition will promote the public good.

(c) If the controlling interest sought to be acquired is in a company that owns or operates a nuclear power plant, the finding that the acquisition will promote the public good shall include a determination that the nuclear plant's decommissioning fund and other funds and financial guarantees available solely for the purpose of decommissioning are adequate to pay for complete decommissioning at the time of the acquisition and that the means are in place to assure on at least an annual basis that these funds and financial guarantees will be adequate for such purpose at all times during the future operation of the plant. The board shall further determine that all such funds and guarantees, whenever furnished and wherever situated, are protected pursuant to Vermont law from any claims or uses other than application to the complete decommissioning of the plan. In this section, "decommissioning" has the meaning stated in subdivisions 260(b)(1)–(3) of this title.

(d) If any company acquires such a controlling interest without the prior approval of the public service board, the board may then, after due notice and opportunity for hearing,

(1) approve the acquisition; or

(2) modify any existing certificates or orders authorizing either or both companies to own or operate a public utility business under the provisions of this title; or

(3) revoke any such existing certificates or orders, or revoke any orders approving the articles of association of such companies; or

(4) declare the acquisition null and void, all as necessary to promote the public good.

~~(d)~~(e) The board may by rule specify terms and conditions upon which companies shall give prior notice of acquisitions regulated by this section. Any such rule may specify categories of acquisitions that may be deemed to be approved if timely notice has been filed and an investigation has not been initiated by the board.

~~(e)~~(f) For the purposes of this section:

(1) "Controlling interest" means ten percent or more of the outstanding voting securities of a company; or such other interest as the public service board determines, upon notice and opportunity for hearing following its own investigation or a petition filed by the department of public service or other interested party, to constitute the means to direct or cause the direction of the management or policies of a company. The presumption that ten percent or more of the outstanding voting securities of a company constitutes a

controlling interest may be rebutted by a company under procedures established by the board by rule.

(2) "Voting security" means any stock or security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company or any security issued under or pursuant to any agreement, trust or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such a security are presently entitled to vote in the direction or management of the affairs of a company.

(3) A specified per centum of the "outstanding voting securities of a company" means such amount of outstanding voting securities of such company as entitles the holder or holders thereof to cast that specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

Sec. 2. 30 V.S.A. § 260 is added to read:

§ 260. DECOMMISSIONING TRUST; NUCLEAR GENERATION

(a) Purpose. The purpose of this section is to promote reclamation of lands on which nuclear energy generation plants are located, as soon as technically possible following cessation of use for electric power generation or of authority to operate, to a condition that allows future beneficial use of those lands, whether for energy production, industrial use, commercial use.

recreational use, or other use consistent with the character and traditional settlement patterns and land uses of the state, region, and locality.

(b) On and after March 22, 2012, any person or entity owning or controlling a nuclear energy generation plant, whether or not the plant is in operation, shall have in place a decommissioning trust that is adequate at all times to fund the full cost of complete decommissioning or, if decommissioning has commenced, to fund the full remaining cost of complete decommissioning and otherwise meet the requirements of this section. For the purpose of this section:

(1) "As soon as technically possible" excludes placing the plant in storage for later decommissioning.

(2) "Decommissioning" means the decommissioning of a nuclear plant in accordance with the decommissioning requirements of the Nuclear Regulatory Commission, management and storage of spent fuel, and return of the site of the plant to a greenfield condition as soon as technically possible after either of the following, whichever is earlier: the permanent cessation of the plant's use for generation of electricity or a date set by the board in a certificate applicable to the plant, person, or company for cessation of authority to operate the plant.

(3) "Greenfield condition" means restoring the site by removal of all structures, equipment, and foundations and, if appropriate, regrading and reseeding the land.

(c) A decommissioning trust shall be funded by cash or a financial instrument or both as long as the instrument is approved by either the Nuclear Regulatory Commission or the public service board and does not rely on placing the plant in storage for later decommissioning. Such an instrument may include a guarantee by a parent corporation.

(d) A decommissioning trust and any included funds and financial instruments shall be subject to the laws of Vermont, shall be usable by the beneficiary only for the purpose of decommissioning, and shall include a spendthrift provision sufficient under Vermont law to restrain both voluntary and involuntary transfers of the beneficiary's interest.

Sec. 3. 30 V.S.A. § 248(e)(2) is amended to read:

(2) No nuclear energy generating plant within this state may be operated beyond the date permitted in any certificate of public good granted pursuant to this title, including any certificate in force as of January 1, 2006, unless the general assembly approves and determines that the operation will promote the general welfare, and until the public service board issues a certificate of public good under this section. If the general assembly has not acted under this subsection by July 1, 2008, the board may commence proceedings under this

section and under 10 V.S.A. chapter 157, relating to the storage of radioactive material, but may not issue a proposed, preliminary, or final order on the merits of continued operation or certificate of public good until the general assembly determines that operation will promote the general welfare and grants approval for that operation.

Sec. 4. EFFECTIVE DATE

This act shall take effect from passage and shall apply to any petition for approval or for a certificate of public good filed with the public service board on or after January 1, 2008.