

H.436

An act relating to decommissioning and decommissioning funds of nuclear energy generation plants

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

Sec. 1. FINDINGS

The general assembly finds all of the following:

(1) Entergy Nuclear Vermont Yankee, LLC (ENVY) is the owner of the Vermont Yankee nuclear plant located in Vernon.

(2) ENVY has committed and is required by law to decommission the plant to a “greenfield” condition once the Vermont Yankee site is no longer used for nuclear purposes or non-nuclear commercial, industrial, or similar uses. As a matter of law, ENVY bears the risk of all costs in completing such decommissioning.

(3) ENVY is a limited liability corporation with a single asset: the Vermont Yankee nuclear plant.

(4) ENVY is an indirect, wholly owned subsidiary of Entergy Corporation (Entergy Corp.), headquartered in New Orleans, Louisiana.

(5) Entergy Corp., through various intermediaries and subsidiaries, owns and operates 11 nuclear plants in the United States, with approximately 30,000 MW of capacity. It is the second largest nuclear generating company in the

United States. In 2007, Entergy Corp. had operating revenues of \$11.4 billion and a net profit of \$1.1 billion.

(6) Estimates of costs to decommission the Vermont Yankee nuclear plant have risen substantially over the years.

(A) In 1994, TLG Services, which provides such estimates for the plant, estimated the costs for immediate decommissioning of the plant (in 1993 \$) at \$313 million and delayed decommissioning (SAFSTOR) at \$319 million.

(B) In 1999, TLG Services estimated the costs for immediate decommissioning of the plant at \$557 million (1998 \$).

(C) In 2001, TLG Services estimated at \$621 million (2001 \$) the costs for both immediate and delayed (SAFSTOR) decommissioning of the plant.

(D) In 2007, TLG Services estimated (in 2006 \$) decommissioning costs for the plant to be as high as \$893 million for immediate decommissioning and \$991 million for delayed decommissioning. These totals included \$40 million for site restoration.

(E) In 2008, ENVY provided the Nuclear Regulatory Commission (NRC) with decommissioning cost estimates for the plant totaling \$915 million (2007 \$), which included \$219 million for spent fuel storage and management and \$40 million for site restoration.

(7) ENVY may recover some costs of spent fuel storage and management (estimated to be \$219 million total) from the U.S. Department of Energy (DOE). Under a standard contract, DOE was contractually responsible to begin removing spent fuel from the Vermont Yankee site starting in 1998 and has not fulfilled this obligation. Federal courts have determined that DOE is in breach of the standard contract for failure to begin removing spent fuel from nuclear plants on time and is liable for the costs of storing spent fuel past that time. Some court decisions indicate that a nuclear plant may not recover the full amount of these costs.

(8) The balance in the existing decommissioning trust fund for the plant for many years has been significantly lower than the estimated costs of decommissioning.

(A) In July 2002, the balance in the trust fund was \$304 million.

(B) As of December 31, 2007, the trust fund balance was \$440 million.

(C) As of February 28, 2009, the trust fund balance was \$347 million.

(9) ENVY does not have legal authority to operate the Vermont Yankee nuclear plant after March 21, 2012 and therefore cannot reasonably assume revenues from the plant after that date in assessing the adequacy of the decommissioning fund.

(10) ENVY's current plan is to complete decommissioning of the plant no later than 2072. Completing decommissioning in 2072 is a delayed decommissioning or SAFSTOR scenario. ENVY would use delayed decommissioning in order to allow the decommissioning trust fund to grow to meet decommissioning costs.

(11) The Vermont Yankee plant is located near the Connecticut River, with ready access to high voltage transmission lines, a railroad, and highways. Its location is well suited for an energy generation plant or other commercial or industrial use.

(12) Delayed decommissioning (SAFSTOR) of the Vermont Yankee nuclear plant would deprive Vermont for many decades of the economic benefits of the plant's site, including the jobs, taxes, and other economic benefits that would result from its use for energy generation or other commercial or industrial activity.

(13) If four payments of \$114.72 million were made in 2011, 2012, 2018, and 2020, it is estimated that the decommissioning trust fund would have sufficient funds for immediate decommissioning of the plant following cessation of authority to operate on March 21, 2012.

(14) The net present value to ENVY of these four payments in 2009 \$ is \$237.45 million.

(15) Using the decommissioning cost estimates described in subdivision (6)(D) of this section, the cost savings to ENVY from immediate decommissioning, as opposed to SAFSTOR, would be \$98 million (in 2006 \$).

Sec. 2. 30 V.S.A. § 275 is added to read:

§ 275. DECOMMISSIONING; FUND; 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 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) Decommissioning fund. Any person, as defined in 10 V.S.A. § 6001(14), and any company receiving, holding, or subject to a certificate from the board under sections 102, 107, 109, 231, or 248 of this title, shall maintain a separate decommissioning fund for each nuclear energy generation plant located in the state that is owned, operated, or controlled by that person or company. An existing decommissioning fund may be used to satisfy the requirements of this section. Under this section:

(1) A decommissioning fund cannot be structured in a manner that subjects it to claims by creditors in a bankruptcy proceeding or used by the

certificate holder or any other person for any purpose other than decommissioning.

(2) A decommissioning fund shall be funded by cash or other financial instrument that is approved by either the Nuclear Regulatory Commission or the board, which may include a guarantee by a parent corporation.

(3) "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 no later than a maximum of 10 years 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.

(4) "Financial instrument" excludes SAFSTOR or similar long-term storage.

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

(6) "SAFSTOR" means placing and maintaining a nuclear energy generation plant in a condition that allows the plant to be stored and subsequently decontaminated to levels that permit release for unrestricted use.

(c) Existing nuclear generation plants.

(1)(A) The owner or operator of a nuclear energy generation plant in existence in the state as of January 1, 2009 shall add to the plant's decommissioning fund, in addition to any moneys that may be in the fund as of the date of enactment of this section, the following amounts according to the following schedule:

- (i) \$114.72 million by January 1, 2011.
- (ii) \$114.72 million by January 1, 2012.
- (iii) \$114.72 million by January 1, 2018.
- (iv) \$114.72 million by January 1, 2020.

(B) The amount required by subdivision (1)(A)(iv) of this subsection shall be increased or reduced to the remaining amount necessary as of January 1, 2020 to complete decommissioning of the plant. The public service board shall determine the necessary amount to be added or reduced under this subdivision.

(2) Failure of the plant owner to add an amount to the decommissioning fund by a date required by this subsection shall result in the automatic suspension of authority to operate a plant that is subject to this subsection. Such suspension shall be lifted if, on subsequent petition, the board determines that the required amount has been added, along with interest under 9 V.S.A.

§ 41a(a) for the period between the date due and the actual date the amount is added.

(3) Subdivisions (c)(1) and (2) of this subsection shall become effective for an existing nuclear generation plant on December 31, 2010 unless prior to that date the general assembly affirmatively makes the approval and determination concerning the plant's operation described in subdivision 248(e)(2) of this title.

(d) Future certificates; transfer of ownership; nuclear plants. Subsequent to enactment of this section, the board may not issue a certificate under this title authorizing the sale or transfer of ownership of a nuclear energy generation plant required to have a decommissioning fund under this section without a finding that the fund will be adequate to fund prompt decommissioning of the plant without reliance on SAFSTOR or similar long-term storage. Once an approved sale or transfer of a nuclear energy generation plant occurs in compliance with this subsection, any remaining requirements to add amounts to the plant's decommissioning fund under the schedule in subsection (c) of this section shall cease to apply. An affirmative finding under this subsection shall be based on the full estimated costs of decommissioning and shall not:

(1) Be net of salvage value.

(2) Rely on an assumption that the funds available for decommissioning will increase faster than the costs of decommissioning if the plant is in SAFSTOR or similar long-term storage prior to decommissioning.

(3) Assume operation of the plant beyond the date permitted in any certificate of public good granted pursuant to this title.

(e)(1) Decommissioning date. Any nuclear energy generation plant required to have a decommissioning fund under this section shall be decommissioned within a maximum of 10 years after either of the following, whichever is earlier: the date on which the plant permanently ceases to be used for generation of electricity or the date set by the board in a certificate applicable to the plant, person, or company for cessation of authority to operate the plant. This 10-year period may be extended by such additional time as the Nuclear Regulatory Commission may authorize for nonfinancial reasons.

(2) On cessation of a plant's use for electric generation or of authority to operate the plant, the owner of the site of a plant subject to this section may petition the board to allow retention of an existing structure, facility, or component associated with the plant, including a transmission or distribution facility or a road. The board may grant such a petition if it finds that allowing the structure, facility, or component to remain is consistent with future beneficial use of the property as described in subsection (a) of this section and will promote the public good. The possibility that an existing structure,

facility, or component might be retained after decommissioning shall not affect the determination of the adequacy of the decommissioning fund pursuant to subsection (d) of this section.

Sec. 3. EFFECTIVE DATE

(a) This act shall take effect from passage, except that 30 V.S.A. § 275(c)(1) and (2) shall take effect as provided under 30 V.S.A. § 275(c)(3).

(b) Notwithstanding 1 V.S.A. §§ 213 and 214, Sec. 2 of this act shall apply to certificates granted by the public service board prior to enactment and proceedings pending before that board as of the date of enactment.