

1 H.589

2 Introduced by Representatives Klein of East Montpelier and Krawczyk of

3 Bennington

4 Referred to Committee on

5 Date:

6 Subject: Energy; public service; nuclear generation; greenfield restoration;

7 spent fuel management; trusts

8 Statement of purpose: This bill proposes to require that each nuclear energy
9 generation plant in the state institute two trusts, one with sufficient funds to
10 support return of the site to a "greenfield" condition and the other with
11 sufficient funds to support long-term spent fuel management.

12 An act relating to nuclear energy generation and the institution of trusts for
13 greenfield restoration and spent fuel management

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

15 ~~Sec. 1. 30 V.S.A. § 260 is added to read:~~

16 ~~§ 260. GREENFIELD RESTORATION; SPENT FUEL MANAGEMENT;~~

17 ~~TRUSTS; NUCLEAR GENERATION~~

18 ~~(a) Requirement for trusts. On and after March 22, 2012, any person or~~
19 ~~entity owning or controlling a nuclear energy generation plant located in this~~

1 ~~state, whether or not the plant is in operation, shall have in place the trusts~~
2 ~~required by this section.~~

3 ~~(b) Greenfield restoration trust. Such person or entity as provided in~~
4 ~~subsection (a) of this section shall have in place a trust that the public service~~
5 ~~board has determined to be adequate to fund the full projected cost of restoring~~
6 ~~the site of the plant to a greenfield condition following decommissioning of the~~
7 ~~plant. For the purpose of this section, "greenfield condition" means the site~~
8 ~~has been restored by removal of all structures, equipment, and foundations and,~~
9 ~~if appropriate, regrading and reseeding the land. It does not include~~
10 ~~radiological decontamination.~~

11 ~~(c) Spent fuel management trust. Separately from the trust required by~~
12 ~~subsection (b) of this section, such person or entity as provided in subsection~~
13 ~~(a) of this section shall have in place a trust that the public service board has~~
14 ~~determined to be adequate to fund the full projected cost of managing spent~~
15 ~~fuel associated with the plant. For the purpose of this section, "managing spent~~
16 ~~fuel" means the control and supervision of uranium fuel that has been used in~~
17 ~~and removed from the reactor of a nuclear energy generation plant until such~~
18 ~~time as the fuel is removed from Vermont to a federally certified long-term~~
19 ~~storage facility. It includes the storage of such fuel at the site of a nuclear~~
20 ~~energy generation plant and all associated operations, security, and~~
21 ~~maintenance.~~

1 ~~(d) In determining that a trust is adequate under this section, the board:~~

2 ~~(1) May allow periodic additions of funds to the trust rather than~~
3 ~~requiring that the full projected amount be in place on March 22, 2012,~~
4 ~~provided that the trust is fully funded by March 22, 2022.~~

5 ~~(2) Shall find that the trust conforms to all requirements of this section.~~

6 ~~(3) May include such conditions and requirements as it deems necessary~~
7 ~~to protect the public good.~~

8 ~~(e) This section does not require the inclusion in a trust of funds necessary~~
9 ~~for radiological decontamination of a plant in accordance with regulations of~~
10 ~~the Nuclear Regulatory Commission (NRC). A trust under this section shall be~~
11 ~~separate from any decommissioning trust fund required for a plant by the NRC.~~

12 ~~(f) A trust under this section shall be funded by cash or a financial~~
13 ~~instrument or both as long as the instrument is approved by the public service~~
14 ~~board. Such an instrument may include a guarantee by a parent corporation.~~

15 ~~(g) A trust under this section and any included funds and financial~~
16 ~~instruments shall be subject to the laws of Vermont, shall be usable by the~~
17 ~~beneficiary only for the purpose set out in subsection (b) or (c) of this section,~~
18 ~~and shall include a spendthrift provision sufficient under Vermont law to~~
19 ~~restrain both voluntary and involuntary transfers of the beneficiary's interest.~~

20 ~~(h) In determining the adequacy of a trust under subsection (c) of this~~
21 ~~section, the board shall not:~~

1 (1) Assume or account for any payment by the federal government for
2 managing spent fuel associated with the plant unless and until such payment is
3 made.

4 (2) Assume that moneys from a decommissioning trust fund required by
5 the NRC for the plant are available for managing spent fuel unless and until the
6 NRC has affirmatively approved a request by the plant owner for such use.

7 (i) An existing nuclear energy generation plant in the state shall petition the
8 board no later than January 31, 2011, for a determination under this section,
9 and the board shall render its decision on such petition on or before
10 December 31, 2011.

11
Sec. 1. FINDINGS

(a) The general assembly finds that it is necessary to take action to ensure that once the state's sole nuclear generation plant ceases to produce electricity, sufficient funding exists for all postclosure activities to occur at the plant, including funding decommissioning, management of spent fuel, and restoration of the plant site to a greenfield condition.

(b) In this regard, the general assembly finds:

(1) The Vermont Yankee Nuclear Power Station and its owners.

(A) Vermont currently has one nuclear generation plant, the Vermont Yankee Nuclear Power Station (VYNPS or the station), located in the town of Vernon, Vermont.

(B) Entergy Nuclear Vermont Yankee, LLC (ENVY) is the owner of the station. ENVY is a limited liability corporation with three primary assets: the VYNPS, any associated power contracts, and the ability to access, for the purpose of decommissioning, a decommissioning trust fund established for the station.

(C) Entergy Nuclear Operations, Inc. (ENO) is the operator of the station. ENO operates five other nuclear plants, with one located in

Massachusetts, three in New York, and one in Michigan, and provides operations and management services to other nuclear plants that it does not operate directly.

(D) ENVY and ENO are indirect, wholly owned subsidiaries of Entergy Corporation (Entergy Corp.), which has its principal offices in New Orleans, Louisiana. Entergy Corp., through various intermediaries and subsidiaries, owns and operates 11 nuclear plants in the United States with 10,125 MW of capacity. Entergy Corp.'s total generating capacity is approximately 27,000 MW. It is the second largest nuclear generating company in the United States. In 2009, Entergy Corp. had operating revenues of \$10.7 billion and a net profit of \$1.25 billion. During that year, Entergy Corp. received a net income of \$631 million total from its nonutility nuclear plants, including the VYNPS.

(2) Scheduled closure of the VYNPS on March 21, 2012.

(A) In 2002, ENVY and ENO became the coholders of facility operating license DPR-28, a federal license to operate the VYNPS that expires at midnight on March 21, 2012. ENVY and ENO have applied to the Nuclear Regulatory Commission (NRC) for renewal of that license for a period of 20 years, extending the expiration date to midnight on March 21, 2032.

(B) The NRC recognizes that the decision on whether a nuclear generation plant should continue in operation past its initial license expiration ultimately is up to non-NRC decision-makers, including the state in which the plant is located. In its 2007 supplemental environmental impact statement (EIS) on relicensing the VYNPS, the NRC stated:

Once an [NRC operating license] is renewed, State regulatory agencies and the owners of the plant will ultimately decide whether the plant will continue to operate based on factors such as the need for power or other matters within the State's jurisdiction or the purview of the owners. . . .

NRC does not have a role in the energy-planning decisions of State regulators and utility officials as to whether a particular nuclear power plant should continue to operate.

NRC, Generic EIS for License Renewal of Nuclear Plant: Supplement 30, Vermont Yankee Nuclear Power Station at 1-8, 1-9 (Aug. 2007).

(C) These statements are based on the NRC's prior recognition of the decision-making role of other entities, including the states, in whether a nuclear plant will continue to operate. In adopting its environmental impact statement process and decision standard in 1996 regarding reactor license renewal, the NRC stated:

After the NRC makes its decision based on the safety and environmental considerations, the final decision on whether or not to continue operating the nuclear plant will be made by the utility, State, and Federal (non-NRC) decisionmakers. This final decision will be based on economics, energy reliability goals, and other objectives over which the other entities may have jurisdiction. The NRC has no authority or regulatory control over the ultimate selection of future energy alternatives . . .

Because the objectives of the utility and State decisionmakers will ultimately be the determining factors in whether a nuclear power plant will continue to operate, NRC's proposed decision standard is appropriate.

NRC, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28467, 28473 (June 5, 1996).

(D) In 2002, in docket number 6545, the Vermont public service board (PSB or the board) issued a certificate of public good (CPG) (the PSB Order) to ENVY and ENO, allowing them under state law to operate the station through March 21, 2012. In issuing the CPG, the PSB relied on an agreement by ENVY and ENO that the board has jurisdiction over whether the station can continue to operate beyond that date.

(E) Pursuant to 30 V.S.A. § 248(e)(2), in order to continue operation beyond March 21, 2012, the VYNPS must obtain the general assembly's approval and determination that continued operation of the station will promote the general welfare and subsequently must obtain a certificate of public good from the board. Pursuant to Sec. 1(a) of No. 160 of the Acts of the 2005 Adj. Sess. (2006), the general assembly's approval and determination must be "expressed in law." ENVY and ENO have filed a petition stating that they seek "such approvals from [the] Board and the Vermont General Assembly as may be required to operate the Vermont Yankee Nuclear Power Station ('VY Station') after March 21, 2012."

(F) Pursuant to Sec. 1(f) of No. 160 of the Acts of the 2005 Adj. Sess. (2006) and chapter 157 of Title 10, the general assembly is to consider, concurrently with the question of continued operation, whether to approve the storage of spent nuclear fuel derived from the operation of the VYNPS after March 21, 2012.

(G) On February 24, 2010, the Vermont senate voted on S.289, a bill that proposed to approve until March 21, 2032, the continued operation of the VYNPS and associated storage of spent fuel derived from that operation. The bill did not pass. Four senators voted yea and 26 voted nay.

(H) Therefore, under existing law, the VYNPS shall close on or before March 21, 2012. Yet there remain significant unresolved issues relating to funding postclosure activities at the station.

(3) Postclosure funding.

(A) Postclosure activities at the VYNPS will include decommissioning (radiological decontamination) in accordance with NRC requirements, management of spent fuel that has not been delivered to the U.S. Department of Energy (DOE), and restoration of the plant site to a greenfield condition.

(B) In a February 3, 2009, evaluation regarding the VYNPS, the NRC stated that ENVY and ENO had provided the following cost estimates for postclosure activities:

(i) \$656.1 million for decommissioning (radiological decontamination), in 2007 dollars, assuming decommissioning commences in 2067 and is completed by 2072.

(ii) \$219 million for spent fuel management, in 2007 dollars, assuming that the federal government begins picking up spent fuel in 2042.

(iii) \$40 million for site restoration to a greenfield condition, in 2006 dollars.

(4) Funding decommissioning.

(A) The \$656.1 million estimate of decommissioning costs by ENVY and ENO is not based on a detailed site characterization. Actual costs of decommissioning can vary significantly once site-specific conditions are included. Discovery of tritium and other radioactive material in the soil and groundwater at the Connecticut Yankee nuclear plant resulted in substantial increases in decommissioning costs at that facility, with estimates of that increase ranging from the tens of millions of dollars to \$481 million.

(B) In January 2010, ENVY disclosed that underground pipes at the VYNPS were leaking tritium, despite its officials having testified previously, under oath, that no such pipes existed.

(C) In 2009, in response to NRC concerns about a potential shortfall between funding and decommissioning costs, Entergy agreed to establish a parent company guarantee of \$40 million.

(D) As of February 28, 2010, the market value of the decommissioning trust fund accounts for the VYNPS was approximately \$435 million.

(5) Funding spent fuel management.

(A) Currently there are no funds specifically set aside for long-term management of spent fuel at the VYNPS. Operating revenue will be unavailable for such funding once the plant closes. The decommissioning trust is an irrevocable trust that states it is to be used for the purpose of decommissioning.

(B) The \$219 million estimate of spent fuel management costs by ENVY and ENO may understate the costs. ENVY and ENO have produced other estimates for such costs as high as \$384 million in 2006 dollars, assuming that the federal government begins removing spent fuel in 2057 and completes removal in 2082.

(C) ENVY and ENO's spent fuel management plan relies on receiving money from the federal government for that portion of the spent fuel management costs related to storage of spent fuels since 1998, the year in which the DOE was contractually obligated to begin removing spent fuel from the VYNPS to a permanent storage facility. Although a federal court has held DOE liable, DOE has still not removed any spent fuel from the site, does not plan to remove any spent fuel in the foreseeable future, and will not pay any money to ENVY or ENO until after ENVY or ENO makes expenditures for managing spent fuel.

(D) ENVY and ENO also have proposed to fund spent fuel management from the decommissioning trust fund. The NRC has stated that ENVY must file for an exemption to use money from the decommissioning trust fund to pay for spent fuel management.

(E) The use of decommissioning trust fund moneys to manage spent fuel would mean that fewer funds are available to cover the costs of decommissioning, thus threatening to delay the time at which decommissioning will occur.

(6) Funding greenfield restoration.

(A) ENVY and ENO have committed and are required by the PSB order to decommission the plant to a "greenfield" condition once the VYNPS site is no longer used for nuclear purposes or nonnuclear commercial, industrial, or similar uses. In issuing a CPG to ENVY and ENO, the PSB stated that restoration to a greenfield condition means that once radioactive decontamination is completed, "the site will be restored by removal of all structures and, if appropriate, regrading and reseeding the land."

(B) Currently there are no funds specifically set aside to restore the site of the station to a greenfield condition.

(C) ENVY and ENO's \$40 million (2006 dollars) estimate for restoration of the site to greenfield status was not based on a detailed site

characterization. Therefore, such costs could vary significantly from the estimate.

(7) Responsibility to fund decommissioning.

(A) Under the PSB order, ENVY is responsible for the cost of decommissioning and other postclosure activities and bears the risk of any shortfall in the funds available for those activities.

(B) ENO has stated in a filing to the PSB that, as a colicensee with ENVY, it likely would be jointly and severally liable should the resources of ENVY be inadequate to fulfill its financial responsibilities.

(C) Entergy Corp. has acknowledged in its SEC filings that “the liability to decommission the plant, as well as related decommissioning trust funds” was “transferred” to Entergy Corp. when the station was purchased in 2002.

(8) Entergy Corp., ENVY, and ENO have proposed a corporate restructuring under which ENVY would no longer be a subsidiary of Entergy Corp. and instead would be owned by ENEXUS Energy Corp., a highly debt-leveraged company. Other restructuring scenarios are possible and may be proposed, especially since the New York public service commission recently ruled against the proposed corporate restructuring. A corporate restructuring in which the chain of plant ownership relies heavily on debt increases the risk of insufficient funds for postclosure activities.

(9) The VYNPS 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. A lack of funding for postclosure activities at the station raises economic, energy planning, and land use issues for the state, including:

(A) Delay in the return of the plant site to productive use, including particularly use for electric generation.

(B) Lost opportunities for economic benefits from such productive use, including jobs, taxes, and economic multiplier effects.

(C) A risk of adverse claims against taxpayers, ratepayers, or retail electric utilities for costs associated with postclosure activities.

Sec. 2. 30 V.S.A. chapter 5, subchapter 2 is added to read:

Subchapter 2. Postclosure Funding; Nuclear Generation Plants

§ 270. PURPOSE

The purposes of this subchapter include each of the following:

(1) To encourage the productive use of a site once a nuclear plant on the site ceases to generate electricity.

(2) To diminish any negative impacts to the economy of the state, to government revenues, and to electric consumers from having unavailable for long periods a site that is well-suited and -situated for electric generation and transmission.

(3) To reduce the risk that taxpayers, ratepayers, or retail electric utilities will experience adverse claims or costs resulting from a shortage of available funds for postclosure activities at a nuclear generation plant.

§ 271. DEFINITIONS

When used in this subchapter:

(1)(A) “Affiliated entity” means any person or business organization that, on or after January 1, 2010:

(i) owned or controlled or owns or controls an interest, directly or indirectly, in the owner or operator of a nuclear generation plant; or

(ii) was or is a corporation that, directly or indirectly, was or is a parent of the owner or operator of a nuclear generation plant.

(B) For the purpose of this subdivision (1):

(i) “Business organization” includes a parent or subsidiary corporation, a jointly owned or jointly controlled corporation, a limited liability corporation, a joint venture, a partnership, or any other legal or commercial entity.

(ii) “Interest” excludes a right or obligation of a Vermont company, utility, or electric department that arises because the company, utility, or electric department is only a purchaser, user, transmitter, distributor, or reseller of power produced by the nuclear generation plant.

(2) “Board” means the public service board under section 3 of this title.

(3) “Decommission” or “decommissioning” means removal of a nuclear generation plant safely from service and radiological decontamination in accordance with the regulations of the Nuclear Regulatory Commission (NRC). The term includes reduction of residual radioactivity to a level that permits release of the property for unrestricted use.

(4) “Department” means the department of public service under section 1 of this title.

(5) “Existing nuclear generation plant” means a nuclear generation plant in existence as of January 1, 2010.

(6) “Greenfield condition” means removal of all above- and below-ground structures, equipment, and foundations from a site and, if appropriate, regrading and reseeding the land. The term excludes radiological decontamination and refers instead to activities that occur following permanent cessation of a site’s use for generating electricity from nuclear energy and decommissioning of the site’s nuclear generation plant. The board may authorize that some or all of the activities needed to achieve a greenfield condition may occur once a site is no longer utilized for nonnuclear commercial, industrial, or other uses consistent with the orderly development of a property.

(7) “Managing spent fuel,” “management of spent fuel,” or “spent fuel management” means the control and supervision of uranium fuel that has been used in and removed from the reactor of a nuclear generation plant until such time as the fuel is removed from Vermont and placed in a federally certified long-term storage facility. The term includes the storage of such fuel at the site of a nuclear energy generation plant and all associated operations, security, and maintenance. The term excludes decommissioning of a nuclear generation plant and restoration of the site of such a plant to a greenfield condition.

(8) “Nuclear generation plant” means a facility located in Vermont that produces or has produced electricity using an atomic reaction as an energy source for heat to provide steam to a turbine generator. The term includes a nuclear generation plant that has ceased producing electricity.

(9) “Operator” means a person or entity that, on or after January 1, 2010, operated or operates a nuclear generation plant or held or holds a certificate under this title allowing the person or entity to operate a nuclear generation plant.

(10) “Owner” means a person or entity that, on or after January 1, 2010, owned or owns a nuclear generation plant or held or holds a certificate under this title consenting to the purchase of such a plant by the person or entity.

(11) “Postclosure activities” means all activities and monitoring that occur or are required to occur once a nuclear generation plant permanently ceases generating electricity, including decommissioning, spent fuel management, and restoration to greenfield condition.

§ 272. OBLIGATION; POLICY; DEPARTMENT OF PUBLIC SERVICE

TO ENFORCE

(a) Each owner and operator of a nuclear generation plant is and shall be independently liable for the full cost of postclosure activities at the plant.

(b) It is the law and policy of the state that, in the event that the combined assets of an owner and operator of a nuclear generation plant are insufficient to fund the full cost of all postclosure activities at the plant, the assets of an affiliated entity that benefited from the generation of electricity at the plant shall be available to fund such full cost.

(c) The department of public service shall enforce this subchapter, including subsections (a) and (b) of this section, through all available legal means.

§ 273. DECOMMISSIONING; WHEN IT OCCURS

(a) To achieve the purposes stated in section 270 of this title, it is the law and policy of this state that, to the extent consistent with federal law, the owner and operator of a nuclear generation plant shall complete decommissioning as soon as technically possible after either of the following, whichever is earlier: permanent cessation of the plant's use for generating electricity or a date set by the board in a certificate under this title applicable to the owner or operator for cessation of authority to operate the plant.

(b) In the event that the combined assets of the owner and operator are insufficient to fund the full cost of decommissioning a nuclear generation plant in accordance with subsection (a) of this section, decommissioning of the plant may be delayed provided that decommissioning commences as soon as possible following the availability of sufficient funds, including funds made available by or obtained from an affiliated entity pursuant to subsection 272(b) or (c) of this title.

§ 274. EXISTING NUCLEAR GENERATION PLANT; ACQUISITION;
DECOMMISSIONING TRUST

To achieve the purposes stated in section 270 of this title, it is the law and policy of this state that a person or entity that, on or after April 1, 2010, acquires an existing nuclear generation plant or a controlling interest as defined in section 107 of this title in the owner or operator of such a plant shall have in place, upon acquisition of such plant or interest, a trust for the purpose of decommissioning the plant that is adequate at the time of acquisition to fund the full projected cost of decommissioning without reliance on long-term storage of the plant for later decommissioning and shall be obligated to ensure at least on an annual basis that this trust is adequate for such purpose at all times during the future operation of the plant. For the purpose of this section, the full projected cost of decommissioning shall, at a minimum, be the amount determined in accordance with the regulations of the NRC at 10 C.F.R. § 50.75(c) (table of minimum amounts), as amended.

§ 275. SPENT FUEL MANAGEMENT FUNDING TRUST

(a) To achieve the purposes set out in section 270 of this title, it is the law and policy of this state that, on and after March 22, 2012, the owner and operator of a nuclear generation plant shall have in place a trust for the purpose of funding the management of spent fuel associated with the plant that the board has determined to be adequate to fund the full projected cost of such spent fuel management.

(b) In determining whether a trust is adequate under this section, the board:

(1) May allow periodic additions of funds to the trust rather than requiring that the full projected amount be in place on March 22, 2012, provided that the trust is fully funded by March 22, 2032.

(2) Shall not:

(A) Assume or account for any payment by the federal government for managing spent fuel associated with the plant unless and until such payment is made and placed into the trust.

(B) Assume that moneys from a decommissioning trust fund required by the NRC for the plant are available for managing spent fuel unless and until the NRC has affirmatively approved a request by the plant owner for such use.

(c) The owner and operator of an existing nuclear generation plant shall petition the board no later than January 31, 2011, for a determination that its proposed trust under this section meets the requirements of this subchapter, and the board shall render its decision on such petition on or before December 31, 2011.

§ 276. GREENFIELD RESTORATION TRUST

(a) On and after March 22, 2011, the owner and operator of a nuclear generation plant shall have in place a trust in accordance with this section for the purpose of restoring the site of the plant to a greenfield condition.

(1) If the trust pertains to a nuclear generation plant that is not an existing nuclear generation plant, the trust shall be one that the board has determined to be adequate to fund the full projected cost of restoring the site of the plant to a greenfield condition.

(2) If the trust pertains to an existing nuclear generation plant:

(A) No later than March 22, 2011, the owner and operator of the plant shall place into the trust at least \$10 million.

(B) No later than March 22, 2017, the owner and operator of the plant shall place into the trust at least \$10 million. This amount shall be in addition to the amount required under subdivision (A) of this subdivision (2).

(C) No later than March 22, 2032, the owner and operator shall place into the trust the additional amount, if any, that is necessary to fund the full projected cost of restoring the site of the plant to a greenfield condition. For the purpose of this subdivision (C), "additional amount" means an amount of funding that is in addition to the amounts required under subdivisions (A) and (B) of this subdivision (2).

(b) The owner and operator of an existing nuclear generation plant shall petition the board no later than March 22, 2031, for a determination that its proposed additional amount meets the requirements of subdivision (a)(2)(C) of this section. The board shall render its decision on such petition on or before December 31, 2031.

§ 277. TRUSTS; COMMON PROVISIONS

(a) In determining that a trust is adequate under this subchapter, the board shall find that the trust conforms to the requirements of this subchapter and may include such conditions and requirements as it deems necessary to protect the public good.

(b) Section 275 (spent fuel management funding trust) or 276 (greenfield restoration trust) of this title does not require the inclusion in a trust of funds necessary for decommissioning. A trust under section 275 or 276 of this title shall be separate from any decommissioning trust required for a plant.

(c) A trust under this subchapter 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 the trust, and shall include a spendthrift provision sufficient under Vermont law to restrain both voluntary and involuntary transfers of the beneficiary's interest.

(d) A trust under this subchapter shall be funded by cash, letter of credit held by and payable to the trustee, or surety bond held by and payable to the trustee that is executed by a surety company authorized to do business in this state. Any such letter of credit or surety bond shall be subject to the board's approval.

(e) The trustee of a trust under this subchapter shall be independent of the owner, operator, and any affiliated entity.

(f) With respect to a trust established under this subchapter, the board shall provide for periodic monitoring of the trust, the timely addition to the trust of additional funds if needed to achieve the purpose of the trust, and the return of any excess funds once the purpose of the trust is achieved.

Sec. 3. 30 V.S.A. § 109 is amended to read:

§ 109. SALES AND LEASES; HEARINGS

** * **

(b) ~~No company owning or operating~~ With respect to an electric generating plant in this state with a capacity of 80 megawatts, or greater;

(1) No company owning or operating such a plant in this state may sell or lease any real property or transmission facilities located at that plant that are required or may be required to generate electricity, interconnect generation facilities with electric transmission facilities, or transmit electricity from the plant, without first obtaining a certificate of consent from the public service board.

(2) Any company owning or operating such a plant that has, in the course of obtaining a certificate from the board under this title, provided evidence that the assets, cash flow, financial resources, skill, experience, or other resources of an affiliated entity may be available or called or relied upon, in any circumstance, to satisfy, support, or mitigate its liabilities or responsibilities, shall provide no less than 180 days' prior notice to the board of any sale or lease within any 12-month period of 25 percent or more of the assets of such affiliated entity and shall provide all further information concerning such sale or lease as the board may require, within the period specified by the board. The board shall have authority to open an investigation into any such sale or lease and issue any order that it finds necessary or appropriate to promote or protect the general good of the state. For the purpose of this subsection, "affiliated entity" means any person or business organization that, on or after January 1, 2010:

(A) owned or controlled or owns or controls an interest, directly or indirectly, in a company that owns or operates a plant that is subject to this subsection; or

(B) was or is a corporation that, directly or indirectly, was or is a parent of the owner or operator of a plant subject to this subsection.

(3) For the purpose of subdivision (2) of this subsection:

(A) "Business organization" includes a parent or subsidiary corporation, a jointly owned or jointly controlled corporation, a limited liability corporation, a joint venture, a partnership, or any other legal or commercial entity.

(B) "Interest" excludes a right or obligation of a Vermont company, utility, or electric department that arises because the company, utility, or

electric department is only a purchaser, user, transmitter, distributor, or reseller of power produced by a plant subject to this subsection.

* * *

Sec. 4. SEVERABILITY

The provisions of this act are severable. If any provision of this act is invalid or if any application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.