UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ENTERGY NUCLEAR VERMONT YANKEE, LLC and ENTERGY NUCLEAR OPERATIONS, INC., Plaintiffs, v. PETER SHUMLIN, in his official capacity as GOVERNOR OF THE STATE OF VERMONT; WILLIAM SORRELL, in his official capacity as the ATTORNEY GENERAL OF THE STATE OF VERMONT, and JAMES VOLZ, JOHN BURKE, and DAVID COEN, in their official capacities as members of THE VERMONT PUBLIC SERVICE BOARD, Defendants.	Civil Action No. Declaration of John T. Herron

John T. Herron, declares as follows pursuant to 28 U.S.C. § 1746:

Introduction and Background

1. I am President and Chief Executive Officer Nuclear Operations/Chief Nuclear Officer of Entergy Corporation ("Entergy"). In that position I am responsible for Entergy's ten nuclear electric generating facilities located in Arkansas, Louisiana, Massachusetts, Michigan, Mississippi, New York and Vermont, as well as Entergy's management services for the Cooper Nuclear Station in Nebraska. One of the nuclear facilities for which I am responsible is Vermont Yankee Nuclear Power Station ("Vermont Yankee Station").

2. My nuclear operations career began many years ago at Vermont Yankee Station while it was owned by Vermont Yankee Nuclear Power Corporation ("VYNPC"). After

graduating high school and then serving in the United States Navy from 1972 to 1978. I began my career with VYNPC in 1979 as an auxiliary operator and remained there for next 15 years. My positions at Vermont Yankee Station during that period included technical services superintendant, operations manager, technical program manager, shift supervisor, supervisory control room operator and reactor operator. During part of my time at Vermont Yankee Station, I served as the President of the International Brotherhood of Electrical Workers Local 300, Unit 8.

3. In 1994, I moved from VYNPC to become plant manager at Nebraska Public Power District's Cooper Nuclear Station (long before Entergy had a management services contract to operate that plant). In 1996, I became plant manager for the Tennessee Valley Authority's Sequoyah Nuclear Plant in Tennessee and in 1999 became the site vice president for its Brown's Ferry Nuclear Plant in Alabama.

4. In February 2001, I became vice president for operations at Entergy's Waterford 3 Nuclear Plant in Louisiana. In 2002, I became senior vice president for its Indian Point Energy Center in New York. In 2003, I became Chief Operating Officer for Entergy's northeast nuclear operations. In 2007, I became senior vice president for all of Entergy's nuclear operations and in 2009, I assumed my current position.

5. In my current position, I serve on the board of directors for the Institute for Nuclear Power Operations (INPO) and on the Nuclear Strategic Issues Advisory Committee (NSIAC) of the Nuclear Energy Institute (NEI).

6. I make this declaration in support of the motion for preliminary injunction of Entergy Nuclear Vermont Yankee, LLC ("ENVY") and Entergy Nuclear Operations, Inc. ("ENOI"), the owner and operator respectively of Vermont Yankee Station. ENVY and ENOI

jointly hold Facility Operating License No. DPR-28 issued by the United States Nuclear Regulatory Commission ("NRC"), which was originally due to expire on March 21, 2012. On March 21, 2011, the NRC issued Renewed Facility Operating License No. DPR-28, authorizing Vermont Yankee Station to continue operate until March 21, 2032.

7. In this declaration, I will first provide some background on Vermont Yankee Station and its operation. I will then describe the highly trained and skilled workforce required to operate such facilities safely and reliably and explain the challenges with retaining that workforce given the uncertainties surrounding the plant's status after March 21, 2012 under Vermont's laws. Finally, I will describe the October 2011 refueling outage that Vermont Yankee Station has scheduled and explain the reasons why that outage cannot be postponed without significant adverse consequences and why certainty is needed by early July concerning whether the plant can continue to operate while litigation is pending.

The History of Vermont Yankee Station

8. Vermont Yankee Station is located on an approximately 125 acre site in Vernon, Vermont that is across the Connecticut River from New Hampshire and about three miles from the Vermont state border with Massachusetts. It was built by VYNPC, a company formed by a group of New England utilities. Vermont's two largest utilities, Central Vermont Public Service Corporation and Green Mountain Power Corporation, were the lead owners, together owing slightly more than half of VYNPC. The utility owners of VYNPC shared the output from Vermont Yankee Station in percentages that approximated their respective ownership percentages.

9. In 1999, VYNPC entered into an agreement to sell Vermont Yankee Station to a company called Amergen. In 2001, the Vermont Public Service Board declined to approve that sale, finding that the purchase price did not reflect the fair market value of the facility. VYNPC then began a bid process for Vermont Yankee Station, and Entergy successfully bid to have ENVY acquire the facility for $180 million. As part of its successful bid, ENVY also agreed to enter into a power purchase agreement ("PPA") with VYNPC to sell power at attractive prices for the remaining term of the facility's NRC operating license – that is, through March 21, 2012. VYNPC, in turn, entered into agreements to resell the power sold to it by ENVY to VYNPC's owners.

10. On June 13, 2002, the Vermont Public Service Board issued an order approving the sale of Vermont Yankee Station to ENVY and a certificate of public good authorizing ENVY and ENOI to own and operate the facility. ENVY completed the acquisition of Vermont Yankee Station on July 31, 2002.

The Operation of Vermont Yankee Station

11. Vermont Yankee Station is an electrical generating facility that is powered by a nuclear boiling water reactor. In a nuclear powered electrical generating facility, the nuclear chain reaction produces heat that is used to produce steam that turns a turbine generator that produces electricity.

12. Vermont Yankee Station began commercial operation in March 1972. As originally built, the facility's net generating capacity was approximately 510 MW. After ENVY acquired the facility, it invested approximately $100 million to increase the facility's net generating capacity to approximately 605 MW.

13. Like other nuclear generating facilities, Vermont Yankee Station operates as a baseload generating facility. That means the facility operates at full capacity whenever possible to supply the demand for electricity, or electrical load, that is relatively constant at all times. Vermont Yankee Station has scheduled outages approximately every 18 months for refueling, a process that I will describe further below. Between refueling outages, Vermont Yankee Station tries to operate without interruption 24 hours/day and 7 days/week.

14. Vermont Yankee Station has been an extremely reliable source of power under ENVY's ownership. Over the period from 2003-2010 (approximately the period of ENVY's ownership of the plant), it has operated at an average capacity factor over 92 percent, as contrasted with an average capacity factor below 78 percent for approximately the first 30 years of the plant's life under its prior ownership. In April 2010, Vermont Yankee Station completed a 532-day uninterrupted "breaker-to-breaker" run – that is, a period of uninterrupted service from the time the facility was reconnected to the electrical grid after the completion of a refueling outage until the time the facility was disconnected from the electrical grid for the next refueling outage. This "breaker-to-breaker" run was the second such run for the facility since ENVY took over its ownership. Prior to that, Vermont Yankee Station had never had a "breaker-to-breaker" run.

15. Vermont Yankee Station, like all commercial nuclear facilities, is subject to highly demanding operational requirements. Because it is a nuclear facility, the safe, secure and reliable operation of Vermont Yankee Station is paramount in importance. As Entergy's Chief Nuclear Officer, I personally regard such operation as my first and foremost responsibility.

16. Vermont Yankee Station's operation is subject to close scrutiny and regulation by the NRC, which has a Resident Inspector and a Senior Resident Inspector on site (as it does for

all U.S. commercial nuclear plants). The NRC has detailed rules governing the operation of nuclear facilities, issues many guidance documents pertaining to operation and safety, regularly requests information from its licensees concerning operating events and compliance with regulatory requirements and works with the nuclear industry to develop standards that become incorporated into the NRC's regulations and guidance.

17. Vermont Yankee Station's operation is subject not only to the oversight and regulation of the NRC, but also to monitoring, inspections and reviews by the Institute for Nuclear Power Operations ("INPO"). INPO is a nuclear industry organization that was formed after the Three Mile Island incident in 1979 to promote the highest levels of excellence in safety and reliability in the operation of commercial nuclear facilities – levels of excellence that in fact go beyond compliance with the NRC's regulatory requirements. INPO regularly conducts on-site inspections and reviews of each U.S. commercial nuclear facility, including Vermont Yankee Station. As I mentioned earlier, I serve on the Board of Directors of INPO.

The Impact of Uncertainty on Vermont Yankee's Skilled Work Force

18. Given Vermont Yankee Station's highly demanding operational requirements, it must have a highly skilled, well trained and dedicated workforce. Vermont Yankee Station has over 600 such employees working in such disciplines as engineering (electrical, mechanical, nuclear, chemical and civil), skilled crafts (mechanical, electrical, instrument and control, and radiation protection), operations, finance, security and administration. Approximately 40 percent of them reside in Vermont with the balance residing in either New Hampshire or Massachusetts.

19. Vermont Yankee Station's operators must have either a Reactor Operator License or a Senior Reactor Operator License issued by the NRC. Because there are significant

differences among nuclear facilities, Reactor Operator Licenses and Senior Reactor Operator Licenses are specific to Vermont Yankee Station. In other words, the reactor operator license for another nuclear generating facility does not qualify the license holder to operate Vermont Yankee Station. The holder of a reactor operator license to operate another nuclear facility must first complete the requirements to obtain a Reactor Operator License or Senior Reactor Operating License for Vermont Yankee Station before he or she can be an operator there.

20. A Vermont Yankee Reactor Operator License or Senior Reactor License generally requires the applicant to have at least a year of plant experience and to successfully complete an approximately 24 month training program with a written examination, a field demonstration examination and a simulator examination which are administered by the NRC. Even after such licenses are obtained, operating crews return to the plant simulator and training facility every 6 weeks for one week of further training and requalification. Training for Vermont Yankee Station technicians is also specific to the particular position and typically requires up to 12 months of initial training with annual retraining and requalification. Vermont Yankee Station's training programs are accredited by INPO.

21. The uncertainty over whether Vermont Yankee Station will be able to continue to operate beyond March 2012 is creating increasingly serious challenges for retaining the highly specialized and skilled personnel needed to operate the plant. The commercial nuclear power industry has not been a growth industry for many decades so the number of people who have chosen to enter the industry has been limited. There are 104 operating nuclear facilities in the United States and the competition to hire the best workers is intense. Nuclear operators actively recruit talented workers on such widely-accessed web sites as Monster.com. It is not uncommon

for nuclear plant operators to offer financial incentives to entice workers to move. See Herron Exhibit 5.

22. Even for operators whose licenses are specific to Vermont Yankee Station, retention in the face of the current uncertainty over the plant's future remains a significant challenge. A Vermont Yankee Station operator may well be willing to make the training commitment required to become licensed to operate another facility because there is a reasonable expectation of longer-term job security there. By contrast, an operator at another facility is very unlikely to make the training commitment required to become licensed to operate Vermont Yankee Station when that job may no longer exist after March 21, 2012. In fact, Vermont Yankee Station has had increasing difficulty attracting seasoned nuclear employees, especially in operations, as a result of the plant's uncertain status beyond that date.

23. In my current position as President and Chief Executive Officer Nuclear Operations and in my prior position as senior vice president for nuclear operations, I periodically visit each of Energy's nuclear facilities and meet with workers, both individually and in groups, and to hear and address their questions and concerns. I held such meetings at Vermont Yankee Station in February and April 2010. A recurrent theme in the questions and concerns raised by the plant's workers was the uncertainty over the plant's future beyond March 2012 and the damaging effect that a plant shutdown would have on the workers' jobs, economic security and home values. Some workers said that they felt pressure to find new employment before the plant closed and housing values in the area collapsed.

24. The impending March 21, 2012 deadline for the potential shutdown of Vermont Yankee Station is making it increasingly difficult to retain the highly skilled workers needed to operate the plant. Over the period from 2008 through 2009, while Vermont Yankee Station's

application for a renewed NRC license and a new Vermont Certificate of Public Good (CPG) appeared to be progressing on track, the average attrition rate for the plant's employees – the percentage of employees who left the plant to work elsewhere – was approximately 6.1 percent.

25. In January 2010, tritium, a mildly radioactive form of hydrogen, was discovered in several monitoring wells due to a leak from a piping system which was quickly identified and corrected. Publicity about the tritium release, however, led to increasingly vocal calls for the plant's shutdown, highlighted by a 26-4 Vermont Senate vote in February 2010 against authorizing the state's Public Service Board to issue a new CPG for the plant's operation after March 21, 2012. With the growing questions over the plant's future, the plant's employee attrition rate jumped in 2010 by more than a third to approximately 8.4 percent. The attrition rate for 2011 is on track so far to exceed even that rate.

26. As a matter of normal business practice, departing Vermont Yankee Station employees are interviewed by members of the Human Resources Department concerning the reasons for the employees' departures. The information provided by the employees in these interviews is recorded on exit interview forms. In some cases where an interview is not possible, the departing employee is given the form to complete and returns it to the company. The form seeks the primary reason for leaving, as well as the secondary reason for leaving and also asks a series of questions related to the departing employee's experience at Vermont Yankee Station and the circumstances of departure.

27. Starting around the middle of 2010, "relicensing" became an increasingly frequent reason given for changing jobs. Over the period from July through December 2010, 4 out of 11 departing employees cited relicensing as either the primary or secondary reason for their departures, and another 3 of the departing employees cited relicensing as an issue in their

responses to some of the other questions in the form. In just the first three months of 2011, almost two-thirds of departing Vermont Yankee Station employees (8 of 13) cited "relicensing" as either the primary or secondary reason for their leaving to take another job. Their questionnaire responses are also especially revealing about the importance of this issue to the plant's employees:

- If you are going to another job, what does the job offer you that your job at VY did not? *No issues with future security* (Herron Exhibit 1)
- If you are going to another job, what does the job offer you that your job at VY did not? *... certainty of position – they are licensed until 2029* (Herron Exhibit 2)
- What could we have done to prevent you from leaving? *No – they tried – it was a very hard decision – I waffled back and forth – what I need the company can't supply – get relicensed* (Herron Exhibit 3)
- Would you recommend someone to VY? *Not right now – if there was re-licensing - yes* (Herron Exhibit 3)
- What could we have done to prevent you from leaving? *Relicensing* (Herron Exhibit 4)
- If you are going to another job, what does the job offer you that your job at VY did not? *Future stability* (Herron Exhibit 4)
- What could we have done to prevent you from leaving? *Relicensing sooner or providing more re-assurance – talk was everyday about relicensing and then it all stopped ... a lot of people in training are talking about leaving. Positive message about re-licensing need[s] to come more regularly and from [higher] up* (Herron Exhibit 5)
- If you are going to another job, what does the job offer you that your job at VY did not? *...primarily – stability – no worries about relicensing* (Herron Exhibit 5)
- Would you recommend someone to VY? *Right now no but if relicensing was set then yes* (Herron Exhibit 5)
- What could we have done to prevent you from leaving? *No – want to try another opportunity in my life –licensing is part of it ...* (Herron Exhibit 6)
- What did you like the most/least about working at VY? *...Least relicensing issue* (Herron Exhibit 7)

- What did you like the most/least about working at VY? ... *Recommend – company states: 1.We are going to fight this in court 2. Or we will allow Stat[e] of VT to decide and extend bonuses for people to stay* (Herron Exhibit 8)
- What could we have done to prevent you from leaving? *License extension* (Herron Exhibit 8)

28. An order by this court to keep Vermont Yankee Station operating, even if temporary and effective only for as long as this litigation continues, would provide substantial help in allaying these worker concerns. While Vermont Yankee Station workers would know that the plant could still be shut down at some point if the courts ultimately ruled against ENVY, such an order would blunt some of the immediacy of the looming March 21, 2012 deadline and help to tip the balance for those workers who are now torn between staying or leaving.

Vermont Yankee Station's Fall 2011 Scheduled Refueling Outage

29. As I previously discussed, Vermont Yankee Station has refueling outages scheduled approximately every 18 months. These outages are necessary because the nuclear fuel in the reactor core becomes depleted and cannot produce enough energy for the plant to maintain full power. The plant can continue to operate for a few weeks at reduced power, but a longer period of such operation invalidates the design requirements for the core's operation in the next operating cycle, requiring re-analysis, possibly re-design and potentially even re-fabrication of the core at additional cost. There are 368 fuel assemblies in the reactor core of Vermont Yankee Station. During each refueling outage, about one-third of the reactor core or approximately 120 fuel assemblies are replaced with new fuel assemblies.

30. Vermont Yankee Station's refueling outages typically take approximately 25 days. During that time, in addition to the replacement of fuel assemblies in the reactor core, workers also perform inspections, testing and other work on the facility that cannot be safely and

efficiently performed while the nuclear reactor is operating, including the installation of new components and the testing, rebuilding and replacement of existing equipment. Much of the work that is done during a refueling outage is necessary to comply with the facility's Technical Specifications that are a part of the NRC's operating license.

31. A nuclear plant refueling outage is an extraordinarily intense and demanding exercise. During a typical Vermont Yankee Station refueling outage, there are approximately 5,000 tasks to be performed during the approximately 25 day period. To perform these tasks, approximately 800 to 1,000 supplemental workers are brought in from other Entergy nuclear facilities, craft labor unions and outside contractors. These supplemental workers and Vermont Yankee Station's regular employees work on an around the clock basis, seven days a week during the refueling outage.

32. In order to secure the very best outside workers and specialists in unique technical areas, Vermont Yankee Station normally attempts to contract with supplemental workers as far in advance of the outage as possible. The outage procedures for Entergy's entire fleet of nuclear plants accordingly call for major contracts for personnel and resources to be placed at least nine months before the outage. Due to the uncertainty surrounding its operation beyond March 21, 2012 and the associated questions concerning nature and scope of the October 2011 outage, Vermont Yankee Station has had to refrain from contracting for supplemental workers for that outage so its ability to obtain the very best workers is already being compromised. U.S. nuclear plants have approximately 20 refueling and maintenance outages scheduled for the Fall 2011 period with at least nine of those outages at plants in the Northeastern quadrant of the country – as far west as Ohio and as far south as Virginia – where Vermont Yankee Station has in the past drawn its supply of supplemental workers.

33. Due to the large number of tasks to be performed during a refueling outage, the work must be carefully managed, coordinated, sequenced and scheduled so that workers on different tasks do not get in the way of one another and all preceding steps for each task are completed before the workers assigned to complete the next step begin their work. Even though the plant has been shut down, many plant systems must be maintained in such a way that necessary cooling and monitoring functions are available to ensure plant safety at all times.

34. Vermont Yankee Station's next refueling outage is scheduled for October 2011. Customary industry practice dictates that large generating facilities like Vermont Yankee Station are only taken out of service for such extended scheduled outages during either the spring or fall seasons when temperatures usually are milder and electricity demand is below the peak levels occurring during the summer and winter seasons. Even apart from this customary industry practice, however, Vermont Yankee Station's October 2011 scheduled outage cannot be postponed to any significant extent for several reasons.

35. *First*, as I have explained, Vermont Yankee Station schedules its refueling outages on an approximately 18 month cycle. The reactor core and fuel assemblies are specifically designed and fabricated based on that schedule. The core design includes a small allowance for changes in the outage date. If a scheduled outage is delayed outside the design allowance, the core's design for the next cycle of operation become invalidated, requiring a re-analysis of that design. With a delay of the refueling outage exceeding 30 days, the core would also have to be re-analyzed. If the extension is significantly beyond 30 days, some of the already fabricated new fuel assemblies would have to be re-designed and re-fabricated in order to meet the NRC's acceptance criteria limits for the core design and to provide sufficient power for the plant to operate at full capacity. Completing these steps would add several weeks to the

outage during which the plant would be out of operation and ENVY would be losing millions of dollars in revenues.

36. *Second,* Vermont winter weather would present major difficulties and risks if the October 2011 outage were postponed to any significant extent. I have described the huge number of supplemental workers that will be brought in to help complete the thousands of tasks to be completed during the refueling outage. Some of these workers may be unwilling to travel to and work in Vermont during the winter. Even if sufficient numbers of supplemental workers are willing to come to the plant site, Vermont winter presents major difficulties. These workers must commute to and from the site on a tightly controlled schedule in order to keep the outage work progressing on track. Large trucks and other pieces of heavy equipment also need to be moved to, from, and around the plant site during the outage. Accomplishing all of this in the highly coordinated manner needed to avoid schedule disruptions and outage delays becomes nearly impossible if there is any snow or ice to contend with. Snow and ice also presents very real safety hazards for workers, particularly when they are there in such large numbers and when many of the supplemental workers may come from areas with milder climates and lack experience with driving or even walking in Vermont winter weather conditions.

37. *Third*, Vermont Yankee Station's NRC license requires certain inspections and testing to be performed on a regularly scheduled basis. Inspections and testing that require the reactor or other systems not to be operating, or that are most safely and efficiently performed under such conditions, are scheduled to be done during the facility's refueling outages. The mandatory NRC inspections and testing now scheduled to be done during the October 2011 refueling outage cannot be postponed beyond mid-February 2012 at the very latest. The outage to perform these mandatory inspections and tests therefore cannot be postponed until winter is

over (even if there were no questions about the plant's ability to operate after March 21, 2012). Because outage logistics and prudent concerns for worker safety dictate that the completion of the outage occur before the onset of winter weather, Vermont Yankee's October 2011 scheduled refueling outage cannot realistically be postponed by more than a few weeks at the very most.

The Near-Term Need for Certainty Concerning Whether Vermont Yankee Station Will Continue to Operate While This Litigation Is Pending

38. While Vermont Yankee Station's next refueling outage will not take place until October, certain decisions with significant financial consequences must be made well in advance of the start of that outage. Without knowing whether the plant will be able to continue to operate for the duration of this litigation, it is extremely difficult for Entergy to determine whether to make the financial commitments necessary to proceed with an October refueling outage.

39. ENVY has already extended contractual deadlines to delay the start of fabrication of the nuclear fuel assemblies that will be installed during Vermont Yankee Station's October 2011 refueling outage. The extension will delay the start of fuel fabrication until July 7, 2011. The July 7th deadline is necessary to provide the fuel fabricator sufficient time to fabricate the fuel assemblies and ship them to Vermont Yankee Station before the October 2011 refueling outage. Once ENVY issues the fabrication order, ENVY becomes irrevocably committed contractually to pay for the fabrication services, the total cost of which falls in the range of $5-10 million. Because fuel assemblies that are fabricated for Vermont Yankee Station are tailored to the particular operating and NRC license requirements of that plant, they cannot be used in another nuclear facility without incurring tens of millions of dollars of additional costs.

40. The costs that ENVY would incur if Vermont Yankee Station is not able to operate beyond March 21, 2012 increase substantially after the fuel assemblies are delivered to

the plant. At nuclear plants, all fuel movements into or out of the reactor are performed under water. As a result, when the fabricated fuel assemblies are delivered to Vermont Yankee Station, normally within a month of the start of the refueling outage, they are inspected and placed into the refueling pool before the start of the outage so that they are ready to be moved into the reactor core during the outage.

41. Once those fuel assemblies are placed in the refueling pool, they become mildly contaminated with radioactive compounds that are in the refueling pool water. Such contamination would make the re-use the fuel assemblies at another plant even more costly and impractical. In order to recover the enriched uranium for use at another plant, the fuel assemblies would have to be de-contaminated and de-fabricated at a cost in the millions of dollars. To dispose of the fuel assemblies would be even more costly. For example, when the owner of the Shoreham nuclear plant in New York wanted to dispose of the plant's partially irradiated fuel assemblies, it had to pay another utility in Pennsylvania $46 million (in 1993 dollars) to take them.

42. After the fuel assemblies are loaded into the core of Vermont Yankee Station and the plant ascends to full power, the new fuel assemblies will become highly radioactive and it will become impossible to use them in any other nuclear facility. At that point, the only realistic way for ENVY to avoid losing the entire value of those fuel assemblies, which exceeds $60 million, would be for Vermont Yankee Station to generate power and revenues to defray, insofar as possible, that fuel assembly expenditure.

43. One might ask whether Vermont Yankee Station could avoid incurring these fuel assembly costs by not purchasing new fuel assemblies and only performing mandatory NRC

inspections and testing during the scheduled October outage. ENVY would, however, still face substantial losses if it followed that approach.

44. As the fuel in Vermont Yankee Station's reactor core is depleted over time, the core reaches the point where it will not produce sufficient power to operate the plant at full capacity. Shortly before the start of the October 2011 outage, Vermont Yankee Station's power output will drop below the plant's full capacity and will continue to drop by approximately 1.5 percent per week. Even though the plant's output will be continually dropping, operating costs will remain essentially fixed. As long as the plant remains in operation, its entire workforce must remain at the plant to monitor and maintain safety systems, to provide security, and to ensure compliance with the NRC's requirements. The cost of the plant's workforce totals nearly $70 million per year or over $6 million per month. With shrinking revenues and large continuing operating costs, the plant will become uneconomic to operate if the October 2011 refueling does not take place.

45. ENVY cannot avoid these continuing operating costs by temporarily shutting down the plant but keeping it ready to resume power production if ENVY prevails in this ligation some time after March 21, 2012, even if that option were available to it. As long as fuel remains in the core, all of the essential plant systems must remain active and the NRC's requirements necessitate that virtually the entire Vermont Yankee Station workforce remain on the job, whether or not the plant is producing power.

46. If Vermont Yankee Station is not refueled this fall, its economics will become increasingly unfavorable, and ENVY consequently will be faced before too long with a decision to permanently, and irreversibly, shut down the plant. If that decision is made, the fuel would be removed from the reactor core, eventually permitting the plant's staffing to be reduced.

Permanent shutdown, however, would mean that ENVY would lose the economic benefit of the additional 20 years of operation authorized by the NRC's renewed license should it eventually prevail in the courts. In addition to those losses, ENVY would lose the benefit of 20 years of additional growth in the balance of the NRC-regulated trust that has been established to fund Vermont Yankee Station's decommissioning.

47. Without a court order allowing Vermont Yankee Station to continue operating until this litigation is completed, ENVY will therefore suffer harm no matter what it does. It can refuel the plant, which requires making substantial fuel investments that will be at least in some substantial measure be lost if the plant must cease operation on March 21, 2012 before this litigation has been finally resolved. Alternatively, it can not refuel the plant, making the plant's continued operating uneconomic and forcing ENVY into a decision to permanently shut down the plant and denying it the benefits of the 20 years of continued operation authorized by the NRC's renewed license even if the courts eventually rule in its favor in this litigation. Additionally, in either case, the uncertainty surrounding the Vermont Yankee Station's future will make it difficult to retain and attract the highly skilled and qualified workers necessary to keep the plant operating.

48. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 19, 2011.

John T. Herron