

12-707-CV(L)

12-791-CV(XAP)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ENTERGY NUCLEAR VERMONT YANKEE, LLC
and ENTERGY NUCLEAR OPERATIONS, INC.,
Plaintiffs – Appellees – Cross-Appellants,

v.

PETER SHUMLIN, in his official capacity as GOVERNOR OF THE STATE OF VERMONT; WILLIAM H. SORRELL, in his official capacity as 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 – Appellants – Cross-Appellees.

On Appeal from the United States District Court for the District of Vermont

JOINT APPENDIX – VOLUME VI OF VII (Pages A-1434 to A-1723)

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CONTENTS

Page

Docket Entries

Docket in <i>Entergy Nuclear Vermont Yankee, LLC v. Shumlin</i> , 1:11-cv-00099-jgm, D. Vt., dated May 24, 2012	A-1
---	-----

Transcripts

Preliminary Injunction Hearing Transcript, June 23, 2011 [pp. 1-261]	A-26
Preliminary Injunction Hearing Transcript, June 24, 2011 [pp. 1-179]	A-92
Trial Transcript, September 12, 2011 AM [pp. 1-154]	A-137
Trial Transcript, September 12, 2011 PM [pp. 155-270].....	A-177
Trial Transcript, September 13, 2011 AM [pp. 271-422]	A-207
Trial Transcript, September 13, 2011 PM [pp. 423-579].....	A-246
Trial Transcript, September 14, 2011 AM [pp. 580-709]	A-286
Trial Transcript, September 14, 2011 PM [pp. 710-849].....	A-320

Trial Exhibits

Plaintiffs' Trial Exhibit 303 – Act 189 Comparison to Component Design Basis Inspection, 2008 Legislative Session	A-356
---	-------

Plaintiffs’ Trial Exhibit 306 [excerpts] –
Vermont Yankee v. United States – Court of Federal Claims,
Defendant’s Post-Trial Brief, May 20, 2010 A-367

Plaintiffs’ Trial Exhibit 308 –
Letter re: Vermont Attorney General Opinion on Dry Cask
Storage, April 30, 2004 A-373

Plaintiffs’ Trial Exhibit 327 [excerpts]–
GDS Study, February 2, 2009 A-378

Plaintiffs’ Trial Exhibit 329 –
2010 Study – Consensus Economic and Fiscal Impact
Analyses Associated with the Future of the Vermont Yankee
Power Plant, March 2010..... A-403

Plaintiffs’ Trial Exhibit 330 –
2009 Study – “An Independent Assessment of the
Environmental and Economic Impacts Associated with the
Closing of the Vermont Yankee Nuclear Plant – Updated,”
March 2009..... A-416

Plaintiffs’ Trial Exhibit 333 –
2011 “Issue Brief – Vermont Yankee Nuclear Power Facility:
Taxation and Other Fees and Payments to the State –
Updated,” February 2011 A-448

Plaintiffs’ Trial Exhibit 338 –
2010 Business Wire – “Final Capacity Auction Results:
Surplus Resources Available for 2013-2014,” August 30, 2010 A-452

Plaintiffs’ Trial Exhibit 339 –
2010 Memo to Consumer Liaison Group Coordinating
Committee on the subject of “Answers to Questions on
Vermont Yankee and Kleen Energy,” May 5, 2010..... A-455

Plaintiffs’ Trial Exhibit 343 –
2011 ISO-NE – Summary of Vermont/New Hampshire
Transmission Systems 2010 Needs Assessment, February
17, 2011..... A-459

Plaintiffs’ Trial Exhibit 344 –
2010 ISO-NE – “An Overview of Markets, Planning and
Vermont Issues,” January 21, 2010..... A-463

Plaintiffs’ Trial Exhibit 345a –
2010 FERC Testimony of Stephen Rourke, August 30, 2010 A-500

Plaintiffs’ Trial Exhibit 345b –
2010 ISO-NE Forward Capacity Results Filing, August 30,
2010 A-535

Plaintiffs’ Trial Exhibit 353 –
2011 Associated Press – “VT utility to buy power from NH’s
Seabrook,” May 24, 2011..... A-551

Plaintiffs’ Trial Exhibit 361 –
Memorandum of Understanding filed in PSB Docket No.
6545, March 4, 2002 A-553

Plaintiffs’ Trial Exhibit 362 [excerpts] –
PSB Docket No. 7082 – Order, April 26, 2006..... A-567

Plaintiffs’ Trial Exhibit 364 –
Rutland Herald & Times Argus, “Douglas signs bill giving
lawmakers say in nuke’s future,” May 21, 2006..... A-570

Plaintiffs’ Trial Exhibit 367 –
Letter from Shumlin to Thayer, February 9, 2009..... A-572

Plaintiffs’ Trial Exhibit 378 [excerpts] –
PSB Docket No. 6545 – Order, June 13, 2002 A-574

Plaintiffs’ Trial Exhibit 379 –
FERC Docket No. ER02-564-006 – Order, January 7, 2009 A-608

Plaintiffs’ Trial Exhibit 380 –
FERC Docket No. ER99-1004-007 – Order, October 11, 2006 A-613

Plaintiffs’ Trial Exhibit 381 –
FERC Docket No. ER02-564-000 – Order, February 5, 2002..... A-616

Plaintiffs’ Trial Exhibit 382 [excerpts] –
2009 Report of the Public Oversight Panel on the
Comprehensive Reliability Assessment of the Vermont
Yankee Nuclear Power Plant, March 17, 2009..... A-626

Plaintiffs’ Trial Exhibit 387 [excerpts] –
2010 Supplemental Report To the Comprehensive Reliability
Assessment of the Vermont Yankee Nuclear Facility, April
30, 2010..... A-640

Plaintiffs’ Trial Exhibit 388 –
Letter from Roberts to Colomb, April 16, 2010 A-646

Plaintiffs’ Trial Exhibit 389 –
PSB Docket No. 7600 – Testimony of Richard Spiese, July 2,
2010 A-650

Plaintiffs’ Trial Exhibit 390 –
PSB Docket No. 7600 – Testimony of Uldis Vanags, January
13, 2010..... A-657

Plaintiffs’ Trial Exhibit 391 [excerpts] –
2008 Reliability Assessment of the Vermont Nuclear
Facility, dated December 22, 2008..... A-671

Plaintiffs’ Trial Exhibit 398 –
Senate Finance Committee – Testimony of Gerry Morris, CD
06-45, February 1, 2006 A-687

Plaintiffs’ Trial Exhibit 399 –
 Senate Finance Committee – Testimony of Tim Nulty, CD
 06-46, February 1, 2006 A-689

Plaintiffs’ Trial Exhibit 403 –
 Senate Finance Committee – Testimony of James Volz, CD
 06-88, March 2, 2006..... A-692

Plaintiffs’ Trial Exhibit 407 –
 2008 Fairewinds Associates Report – Vermont Yankee
 Comprehensive Vertical Audit: Recommended Methodology
 to Thoroughly Assess Reliability and Safety Issues at
 Entergy Nuclear Vermont Yankee, January 2008..... A-696

Plaintiffs’ Trial Exhibit 412 –
 CVA – Issues relating to Draft #3 (Act 189), 2008 Legislative
 Session A-717

Plaintiffs’ Trial Exhibit 433 –
 Draft #3 of S.269 (Act 189), February 20, 2008..... A-719

Plaintiffs’ Trial Exhibit 467 –
 FERC Docket No. ER10-1143-000 et al. – unpublished letter
 order, July 28, 2010..... A-730

Plaintiffs’ Trial Exhibit 472 –
 Q1 2011 Central Vermont Public Service Corp. Earnings
 Conference Call, May 6, 2011 A-734

Plaintiffs’ Trial Exhibit 489 [excerpts] –
 GMP-Seabrook Power Purchase Agreement, May 24, 2011 A-745

Plaintiffs’ Trial Exhibit 520 –
 Letter from Smith to Thayer, July 28, 2009..... A-754

Plaintiffs’ Trial Exhibit 555 [excerpts] –
 PSB Docket No. 7440 – Prefiled Direct Testimony of David
 Lamont, February 11, 2009..... A-755

Plaintiffs' Trial Exhibit 556 –
PSB Docket No. 7440 – Prefiled Surrebuttal Direct
Testimony of David Lamont, April 24, 2009..... A-766

Plaintiff's Trial Exhibit 557 [excerpts] –
Brief of the Vermont Department of Public Service, PSB
Docket No. 7440, July 17, 2009..... A-781

Plaintiffs' Trial Exhibit 614 –
Boiling Water Reactor Diagram..... A-789

Plaintiffs' Trial Exhibit 618 –
Effects of Electric Utility Market Deregulation –
Backgrounder, November 2004 A-790

Defendants' Trial Exhibit 1003 –
U.S. Nuclear Regulatory Commission Final Report, March
2006 A-793

Defendants' Trial Exhibit 1004 –
U.S. Nuclear Regulatory Commission Office of Nuclear
Reactor Regulation, Generic Environmental Impact
Statement for License Renewal of Nuclear Plants, issued
May 1996 A-797

Defendants' Trial Exhibit 1005 –
U.S. Nuclear Regulatory Commission, Generic
Environmental Impact, August 2007 A-800

Defendants' Trial Exhibit 1006 –
Entergy Vermont Yankee Nuclear Power Station Applicant's
Environmental Report, January 25, 2006 A-803

Defendants' Trial Exhibit 1009 –
Testimony of Jay Thayer, Vice President, PSB Docket No.
6812, January 15, 2004 A-810

Defendants’ Trial Exhibit 1016 –
Excerpts of the Prefiled Rebuttal Testimony of Connie Wells,
Senior Manager, PSB Docket No. 6545, February 25, 2002 A-813

Defendants’ Trial Exhibit 1017 –
Entergy’s Memorandum in Opposition to NECNP's
Supplemental Motion to Reconsider, PSB Docket No. 6545,
July 9, 2002 A-817

Defendants’ Trial Exhibit 1018 –
Entergy’s Initial Brief, PSB Docket No. 6545, May 7, 2002 A-824

Defendants’ Trial Exhibit 1020 –
Excerpts of Entergy’s Post-Trial Reply Brief submitted in
Entergy v. U.S., 95 Fed. Cl. 160, June 25, 2010 A-830

Defendants’ Trial Exhibit 1024 –
Certificate of Public Good, PSB Docket No. 6545, June 13,
2002 A-833

Defendants’ Trial Exhibit 1030 –
Entergy’s Market-Based Rate Tariff, Second Revised Volume
No. I, June 24, 2010..... A-836

Defendants’ Trial Exhibit 1031 –
Unpublished letter order of the Federal Energy Regulatory
Commission in *PECO Energy Co., et al.*, Docket No. ER10-
1143-000 et al., July 28, 2010 A-843

Defendants’ Trial Exhibit 1034 –
Letter from Dale Klein, NRC to Gov. James Douglas
(contained in the legislative record of Act 189), April 11,
2008 A-847

Defendants’ Trial Exhibit 1035 –
Index of the legislative record for Act 74, Act 160, and Act
189, prepared by Defendants' counsel A-849

Defendants’ Trial Exhibit 1038 –
Declaration of Bruce E. Hinkley, May 22, 2011 A-852

Defendants’ Trial Exhibit 1039 –
Supplemental Declaration of Bruce E. Hinkley, June 13,
2011 A-861

Defendants’ Trial Exhibit 1046 –
Entergy’s proposed Act 74 bill, March 10, 2005 A-865

Defendants’ Trial Exhibit 1049 –
Declaration of Seth G. Parker, May 23, 2011 A-868

Defendants’ Trial Exhibit 1050 –
Supplemental Declaration of Seth G. Parker, June 13, 2011 A-898

Defendants’ Trial Exhibit 1053 –
Excerpts from VT Electric Plan, 2005 A-902

Defendants’ Trial Exhibit 1065 –
Clean Water Act 316b proposed regs factsheet, March 2011..... A-909

Defendants’ Trial Exhibit 1074 –
Declaration of Robert deR. Stein, May 23, 2011 A-911

Defendants’ Trial Exhibit 1094 –
Green Mountain Power, Update on Vermont Yankee
Decisions..... A-925

Defendants’ Trial Exhibit 1115 –
ISO New England NHNT Transmission Analysis Solutions
Study, April 13, 2011..... A-926

Defendants’ Trial Exhibit 1116 –
Letter from Samuel Collins, NRC Regional Administrator, to
David O'Brien, DPS Commissioner, July 11, 2008 A-928

Defendants’ Trial Exhibit 1117 – Floor debates in the Vermont Senate, track listing and quotes, 2005-2010 Legislative Sessions.....	A-930
Defendants’ Trial Exhibit 1124 – Plaintiffs’ Responses and Objections to Defendants' First Set of Requests for Admission, August 26, 2011	A-931
Defendants’ Trial Exhibit 1220 – Draft letter from Thayer to Vermont Legislator, January 18, 2005	A-945
Defendants’ Trial Exhibit 1225 – Email from Thayer to VTY-All Users re: “VY Dry Cask Legislation PASSED!” June 6, 2005	A-948
Defendants’ Trial Exhibit 1230 – Letter from Thayer to Vermont Senate and House of Representatives, December 18, 2008.....	A-950
Defendants’ Trial Exhibit 1240 – Email from Potkin to Cosgrove re: “comments on JFO report assessing financial impact of VY options,” March 28, 2010.....	A-952
Defendants’ Trial Exhibit 1250 – Email from Cosgrove to Hebert et al. re: “VPR story on today’s news conference,” February 24, 2010.....	A-956
Defendants’ Trial Exhibit 1251 – Email from Hebert to Leonard re: “VY update,” May 6, 2010	A-959
Defendants’ Trial Exhibit 1277 – Email from Cosgrove to Morris re: “legislative public hearing,” April 13, 2005	A-964
Defendants’ Trial Exhibit 1278 – Email from Marshall to Miller re: “suggested revisions to S.124,” April 28, 2006.....	A-969

Defendants’ Trial Exhibit 1307 –
 Letter from NRC Chairman Diaz to PSB Chairman Dworkin,
 May 4, 2004 A-971

Defendants’ Trial Exhibit 1308 [excerpts] –
 Transcript of trial testimony in *Entergy v. U.S.*, 95 Fed. Cl.
 160, March 29, 2010 A-974

Defendants’ Trial Exhibit 1320 –
 Supplemental Report of the Public Oversight Panel, July 20,
 2010 A-981

Defendants’ Trial Exhibit 1340 [excerpts] –
 20-Year Electric Plan, 1983 A-1002

Defendants’ Trial Exhibit 1341 [excerpts] –
 20-Year Electric Plan, 1988 A-1007

Defendants’ Trial Exhibit 1342 [excerpts]–
 20-Year Electric Plan, 1994 A-1012

Defendants’ Trial Exhibit 1343 [excerpts] –
 20-Year Electric Plan, 2005 A-1020

Defendants’ Trial Exhibit 1344 [excerpts] –
 Comprehensive Energy Plan, 1991..... A-1027

Defendants’ Trial Exhibit 1345 [excerpts] –
 Comprehensive Energy Plan: Fueling Vermont’s Future, vol.
 1, 1998..... A-1034

Defendants’ Trial Exhibit 1346 [excerpts] –
 Draft Comprehensive Energy Plan 2011 A-1048

Defendants’ Trial Exhibit 1363 –
 Transcript excerpt of Hearing of House Nat. Res. & Energy
 Committee, re: H.436, February 24, 2009 (NRC witnesses) A-1073

Defendants’ Trial Exhibit 1366 –
Entergy’s “Talking Points for Legislative/Administration
Meetings” for Act 74 A-1074

Defendants’ Trial Exhibit 1371 [excerpts] –
Entergy Form IO-Q Quarterly Report, September 30, 2000..... A-1077

Defendants’ Trial Exhibit 1377 –
ConEd press release November 9, 2000..... A-1079

Defendants’ Trial Exhibit 1379 [excerpts] –
Hebert Deposition Transcript, August 30, 2011..... A-1080

Defendants’ Trial Exhibit 1380 [excerpts] –
Meehan Deposition Transcript, August 11, 2011..... A-1111

Legislative History

Defendants’ Legislative History Appendix A-1137

Plaintiffs’ Legislative History Appendix..... A-1636

Documents from the Record

D.E. 1. Complaint A-1807

D.E. 1-1. Complaint Exhibit A A-1841

D.E. 4-2. John Herron Declaration A-1862

D.E. 4-11. Edward Kee Declaration..... A-1880

D.E. 46-1. John Herron Reply Declaration A-1922

D.E. 46-6. Edward Kee Reply Declaration A-1934

D.E. 46-13. Michael Courtemanche Declaration A-1969

D.E. 77-1. Standard & Poor’s Global Credit Portal: Outlook
On Entergy Corp. Is Revised To Negative Amid Relicensing
Uncertainties; Rates Are Affirmed A-1972

Notices of Appeal

Defendants’ Notice of Appeal, dated February 18, 2012 A-1979

Plaintiffs’ Notice of Cross-Appeal, dated February 27, 2012 A-1981

Defendants’ Amended Notice of Appeal, dated March 23,
2012 A-1983

Vermont State Senate - Act 189 of 2008

As recorded on March 13, 2008

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1 reading of S.364.

2 UNIDENTIFIED MALE SPEAKER: S.364, an
3 act relating to a comprehensive vertical audit and
4 liability assessment of Vermont Yankee Nuclear Facility.

5 PRESIDENT: The Chair recognizes the
6 Senator from Essex-Orleans, Senator Starr. Thank you
7 for that.

8 SENATOR FROM ESSEX-ORLEANS: Thank
9 you. Yesterday, we had some discussion in regards to
10 S.364 and I was really impressed with the -- with the
11 vote at the end. The -- this is -- this is an issue
12 about our power and the future of -- of our economic
13 viability and wellbeing. It is probably one of the most
14 important issues that we'll talk about this year, next
15 year, and possibly even the year after. Cheap power or
16 affordable power, I should say, is critical to -- to
17 that. This -- this organization has been supplying us
18 with a third of our power for many, many years, which
19 under debate yesterday was reported to be 98 or 99 --

20

21 End Track 3

22 Begin Track 4

23

24 -- percent efficient in their everyday, 24 hours a day,
25 seven days a week. And -- and how -- how important this

1 reasonable power is to our mix of power to make it
2 viable for companies and businesses to survive here.

3 Yesterday, I don't know if we were
4 trying to get ahead of somebody else or somebody else
5 was trying to get ahead of us, but I -- I really don't
6 really care who is trying to get ahead of who
7 politically. Politics should not even enter into this
8 discussion. It's a discussion about -- it should be a
9 discussion that we should all take part in, regardless
10 of what party we belong to, about the safety of this
11 facility, about the cost of power to our citizens and,
12 if we are going to be able to attract new businesses --
13 well, better than attracting new businesses, what about
14 keeping the ones we have already with affordable energy?
15 And the Governor or the Executive Branch, I should say,
16 I guess, to be politically correct, has requested
17 that -- requested from the NRC that we be given the
18 opportunity to have an independent study of this
19 organization and -- and I think that's good.

20 We asked to have an independent study
21 done of the organization and then another group of
22 people to interpret the study to -- so we can understand
23 it.

24 I guess what I would like to do and
25 what I would like to propose is that we postpone action

1 strong motivation to keep that plant running on both
2 sides. But if that plant is not reliable, this State is
3 going to pay either now or five years from now or five
4 days from now when it shuts down, if we don't do
5 something in alternative energy planning. This just
6 gives us the information we need to make a rational,
7 realistic decision on the ability of that plant to
8 perform into the future. So I would say that this bill
9 is not incompatible with the Governor's request and I
10 would ask us to go forward because this fills out what
11 the legislature means by an evaluation and what the
12 legislature means by independent. Thank you.

13 PRESIDENT: The Chair recognizes the
14 Senator from Bennington, Senator Sears.

15 SENATOR FROM BENNINGTON: Mr.
16 President, I wonder -- I mean, I have before me an
17 article from the Burlington Free Press, which I know we
18 don't -- but the first paragraph says Governor Jim
19 Douglas decided Wednesday to jump-start the process of
20 an independent assessment. The Senator from Washington
21 just said that the Governor's letter does not include an
22 independent assessment. So I wonder if the rest of the
23 Senate could available themselves of the Governor's
24 letter before we vote on the Senator from Essex-Orleans'
25 motion?

1 SENATOR FROM WINDSOR: Mr. President?

2 PRESIDENT: The Chair recognizes the
3 Senator from Windsor, Senator Campbell.

4 SENATOR FROM WINDSOR: If I could ask
5 for a -- a very brief recess.

6 PRESIDENT: Senate will stand in
7 recess until fall of the gavel.

8 (WHEREUPON, a break in the proceedings occurred.)

9

10 End Track 5

11 Begin Track 6

12

13

14 PRESIDENT: Senators, please come to
15 order. I understand that a letter is being distributed
16 from the Governor. I just want to remind Senators that
17 we are an independent branch of government and, as much
18 as possible, caution you that we do act independently
19 and, therefore, what the other branch might say is
20 usually -- is not intended, according to the rule here,
21 to affect our discussion. So discuss it carefully.

22 The Senator from Bennington had the
23 floor. I assume he's yielded the floor. So the Chair
24 recognizes the Senator from Rutland, Senator Mullin.

25 SENATOR FROM RUTLAND: Thank you, Mr.

1 President. The Rutland County Delegation had the
2 privilege to meet with representatives from our -- our
3 local utility yesterday morning. And for the first
4 time, we were able to hear their concerns about the
5 length of time that the audit may require as outlined in
6 S.364. I don't think anybody in this room is opposed to
7 a thorough and an independent review. In fact, I think
8 we all support a thorough and independent review. But
9 that being said, the -- the importance is that it's a
10 timely and thorough review so that we can move forward
11 with Vermont's energy future. And there are some
12 concerns that, if we delay this out a couple of years,
13 that it could impact the renegotiations with Hydro
14 Quebec.

15 So there -- there are sufficient
16 concerns to Vermont rate payers that we move forward in
17 a timely manner.

18 And I just want to address the
19 statement by the Chair of the Committee about
20 independent. Because clearly, at the bottom of
21 paragraph four in this letter from the Governor it says,
22 "I also expect the assessment include the participation
23 of the Vermont State nuclear engineer and consultants
24 and those NRC inspectors and contractors have
25 independence from the Vermont Yankee operation. So

Vermont Act 189 of 2008

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February 29, 2008

Senate Finance Committee Disk 27/Track 3

(Transcriber note: There were several parties present at these meetings. Speakers' names were used whenever possible, but in the instances where they were not identified or could not be discerned by the transcriber, generic terms were used.)

Begin Minute 3:00

UNIDENTIFIED MALE SPEAKER: -- the problems that may be caused financially or not -- or the federal government not (inaudible) responsibilities (inaudible). Emergency management costs and down time costs. And as I say, the studies have been begun. I don't know -- the Department will have to tell you the status of them. They are not specifically directed at safety and so, although these studies will relate to safety inasmuch as they may indicate that there are costs and financial responsibilities that the legislature can evaluate, they are not specifically (inaudible) safety. There are going to have to be three public engagement hearings. I understand those, too, are being planned and they may be this spring. So you should be aware that those are going (inaudible).

Sorry.

End Minute 4:00

[Disk 27 at Track 1, 4:30]

SENATOR CUMMINGS: Safety is outside the purview of the State of Vermont but as we heard in Maine that when you start looking at the economic aspects of having a plant, we need to know to go forward, that that could become something that's untenable, uneconomical, so we're going to be looking at this issue.

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January 29, 2008

Senate Finance Committee Disk 28/Track 5

Begin Minute 00:00

MR. POWELL: -- did provide written approval (inaudible). (Inaudible) base its decision on review of the technical and financial qualifications of the proposed action.

With regard to the federal qualification review, (inaudible) determined that the proposed (inaudible) will not affect the (inaudible) qualification of Entergy (inaudible) operations as a licensed operator and otherwise does not raise any (inaudible) qualifications issue. (Inaudible.) No changes in the officers or personnel responsible in the facility and no changes in the day-to-day operations of the facility. Entergy (inaudible) operations will at all times remain the licensed operator of the (inaudible) licensed facility.

With regard to the financial qualification review, Entergy must demonstrate that (inaudible) or have reasonable assurance of obtaining the necessary funds (inaudible) operating costs (inaudible). (Inaudible) Entergy must provide reasonable assurance that funds will be available to

1 decommission the facility. (Inaudible) the Entergy
2 staff must determine that Entergy (inaudible)
3 requirements. Entergy's application is currently under
4 review by the NRC staff. On January the 16th, 2008, NRC
5 published notices in the federal register concerning
6 proposed restructuring. (Inaudible) provide the
7 opportunity to members of the public to request a formal
8 hearing on the proposal (inaudible) for our
9 consideration. The NRC staff anticipates completing
10 this review during the spring of 2008. (Inaudible)
11 concludes my prepared statement and Mr. Dusaniwskyi and
12 I are now available to answer any questions you may
13 have.

14 SENATOR CUMMINGS: Okay. Thank you.
15 I guess the concern on this end as it's developing is,
16 (a), is the transfer in any way -- if one of these
17 smaller companies went belly-up, would -- and the
18 decommissioning fund wasn't adequate or wasn't there,
19 would Entergy be protected from the State or I think
20 we're getting very concerned about the -- the
21 decommissioning fund and what happens in 2012. That if
22 there's any way that Entergy could walk away from this
23 (inaudible) and leave Vermont literally holding the bag
24 with a bunch of radioactive (inaudible) and a plant.

25 MR. DUSANIWSKYI: Senator, this is

1 Michael Dusaniwskyi again. Unfortunately, the question
2 that you are asking is of a legal nature for which we
3 have no representation here --

4 CHAIRMAN: Okay.

5 MR. DUSANIWSKYI: -- allowing to
6 answer.

7 CHAIRMAN: We've been trying to find a
8 corporate attorney, but we haven't come up with one yet,
9 so --

10 MR. DUSANIWSKYI: But I can tell you
11 that from a -- from what the regulations require, at
12 this time, if Vermont Yankee is denied a license
13 renewal, we are only anticipating in doing our
14 calculations as to whether or not they will be
15 conforming -- whether or not they are following our
16 regulations through the year 2012. Currently, Entergy
17 has to be putting away a certain amount of money, a
18 minimum decommissioning funding amount in order to
19 decontaminate that facility to NRC standards. If and
20 when they would like -- if anyone wants (inaudible)
21 which is for them to do anything more, like bring it
22 back to a green field, this is not necessarily within
23 the realm of the NRC regulations. The regulations again
24 only require that the licensee decontaminate to NRC
25 standards for either unlimited or limited (inaudible).

1 CHAIRMAN: Okay. And I think that's
2 also been a concern here. I think when most people talk
3 about decommissioning, when it was originally done, the
4 thought was, if not green field, at least a nice place
5 and that the plant would be taken down and not just
6 mothballed and allowed (inaudible). I heard, and I'm
7 not sure from where, (inaudible), that the NRC
8 regulations have changed and that now (inaudible) what
9 they call safe store that this thing can just be left to
10 sit there or (inaudible).

11 MR. DUSANIWSKYI: Well, there are
12 options left open to a licensee as to how they will wind
13 up conforming to our regulations. From a financial
14 standpoint, the idea is that we, the NRC do not regulate
15 commerce, we regulate safety. The point is to make sure
16 that there is no radiological contamination left.

17 As far as spent fuel is concerned,
18 until that --

19 End Minute 5:00

20

21 Senate Finance Committee Disk 28/Track 7

22 Begin Minute 3:00

23 SENATOR CUMMINGS: And thank you for
24 taking the time to talk to us this afternoon.

25 MR. MCELWEE: Thank you.

1 SENATOR CUMMINGS: Okay. The next I
2 have, we're probably one minute ahead, but David is
3 here. Okay. Come on up. Introduce yourself to the
4 committee. You get the (inaudible) chair when you're on
5 the hot seat.

6 MR. MCELWEE: Much better.

7 SENATOR CUMMINGS: Yes. It's worth
8 coming up here to get the nice chair.

9 MR. MCELWEE: Madame Chair, members of
10 the Finance Committee, my name is David McElwee. I'm
11 senior liaison engineer at Vermont Yankee.

12 We understand how some folks might
13 want additional assurances at Vermont Yankee, but we
14 also understand that the NRC reactor oversight process
15 is very comprehensive and can address these concerns, if
16 it's fully understood. Entergy has decided to take no
17 position on S.169. We fully support the existing
18 regulatory framework for which Vermont Yankee falls
19 under, regulated by the Nuclear Regulatory Commission,
20 oversight by the State Department of Public Service, by
21 the Public Service Board and also by the Vermont State
22 Nuclear Advisory Panel. We hope that both the NRC and
23 the State will continue to play a strong role in
24 overseeing the operations at Vermont Yankee.

25 The Maine Yankee inspection took place

1 nearly 12 years ago. There's been a --

2 End Track #7

3 Begin Track #8

4 -- lot of changes in the NRC
5 inspection process since then.

6 Since the Maine Yankee inspection,
7 with substantial input from the Vermont Department of
8 Public Service and the Office of the Vermont State
9 Nuclear Engineer, we've had a number of large-scale, NRC
10 inspections to insure that we didn't have the same type
11 of problems that Maine Yankee did. A number of those
12 inspections occurred almost directly after the Maine
13 Yankee inspections.

14 We've also undergone a complete design
15 basis review, as well as many self-assessments and
16 industry peer reviews, and all of this work was subject
17 to the NRC oversight, as well as oversight from the
18 Vermont State Nuclear Engineer.

19 Some of that work or some of that
20 inspection included a 20 million dollar design basis
21 review validation that Vermont Yankee did itself back in
22 the mid-to-late 1990's. After that, the NRC did a
23 design basis review to look at that work to make sure
24 that it was complete and accurate.

25 We also had an NRC, what's called an

1 architect engineer inspection, which is a large team
2 inspection that looks primarily at design-related
3 activities to make sure that the way the plant was
4 designed is the way that it was built and it's the way
5 that it continues to be operated.

6 We've had what's called Appendix R
7 inspection. And Appendix R is fire protection
8 inspections. That addresses an issue that Oldus
9 (phonetic) brought up in his presentation on cable
10 separation.

11 We've also had an inspection that's
12 called a 4500 inspection. It's an NRC inspection and it
13 has to do with the effectiveness in licensee probably
14 identification and resolution, which is another area
15 Oldus touched upon.

16 SENATOR CUMMINGS: That's the
17 (inaudible).

18 MR. MCELWEE: Exactly. And that's an
19 ongoing inspection. You'll hear in just a minute where
20 we touch upon that again.

21 We also have had engineering team
22 inspections. And the ones that I'm mentioning now are
23 not the routine inspections. They're the inspections
24 that consist of generally four, five or more NRC
25 inspectors for at least a one or two-week period. We've

1 had safety system design inspections, security
2 inspections, and again, problem identification and
3 resolution inspection which was done most recently.

4 We've also had the component design
5 basis inspection. That's the inspection that we were a
6 pilot plant for in 2004 as a result of the power uprate
7 inquires that the Vermont Public Service Board had
8 during our power uprate hearings and -- and asked for
9 additional NRC inspections. Since that initial pilot
10 program where Vermont Yankee was the first plant to
11 receive that type of inspection, we had an additional
12 one in 2006 as a part of their ongoing inspection
13 program.

14 And now, as a result of or application
15 for license renewal, we've -- we've gone through a
16 significant inspection process by the NRC as a part of
17 that process and that process is still going on as we
18 speak today with -- with additional reviews and
19 inspections from the NRC in the coming weeks and months.

20 So to sum it all up, we believe the
21 existing regulatory framework is -- is one that -- that
22 works and one that we participate in with oversight from
23 the State and input from the State Department of Public
24 Service and State Nuclear Engineer.

25 SENATOR CUMMINGS: (Inaudible.)

1 End Minute 4:00

2

3 March 20, 2008

4 House Natural Resources Committee Disk #89/track 1

5 Begin Minute 00:00

6 UNIDENTIFIED MALE SPEAKER: Thank you.

7 You're here to talk to us about S.364. So this is, for

8 most of us, I mean, we just received the bill. We've

9 been --

10 SENATOR CUMMINGS: Okay. I don't even

11 have a copy, so --

12 UNIDENTIFIED FEMALE SPEAKER: Would

13 you like a copy?

14 SENATOR CUMMINGS: I'd love a copy

15 just to -- I think I can walk through it pretty quickly.

16 UNIDENTIFIED MALE SPEAKER: Why don't

17 you keep -- keep a copy. I'll give her my copy.

18 SENATOR CUMMINGS: I can -- I can go

19 without it, I think. It's actually a pretty simple

20 little bill. Okay.

21 What this bill does, in essence, is

22 the Governor has called for an independent safety

23 assessment. The Congressional Delegation has called for

24 an independent safety assessment. The legislature has

25 talked about the need to do something. What this bill

1 does is define what we mean by an assessment and we talk
2 about a reliability assessment because safety is not
3 within our purview. What -- this defines what such an
4 assessment looks like and then it tells -- describes how
5 it will be independent. And the way we -- we arrived at
6 all of this is, I don't think I have to tell you,
7 there's been a lot of public concern about the Nuclear
8 Regulatory Commission, about we all saw the pictures of
9 the cooling tower collapsing and that was shortly after
10 the last NRC safety check. But that's not really in
11 their domain, they said.

12 End Minute 1:30

13

14 Begin Minute 11:00

15 UNIDENTIFIED MALE SPEAKER: Madame
16 Chair, I'm a little confused. You started off your
17 presentation stating that we don't have oversight for
18 safety of the nuclear plant.

19 SENATOR CUMMINGS: Right.

20 UNIDENTIFIED MALE SPEAKER: And I
21 thought I just heard you say that the Department wants a
22 safety inspection and we want -- I mean, are we saying
23 we're going to forget that we do not have oversight for
24 safety, the NRC does, and we're going to take and forget
25 all that and we're going to do a safety? Or is this --

1 SENATOR CUMMINGS: No.

2 UNIDENTIFIED MALE SPEAKER: -- an
3 independent reliability inspection.

4 SENATOR CUMMINGS: This -- this bill
5 speaks exclusively of reliability and the Governor keeps
6 talking about safety. Our issue has been that we don't
7 have jurisdiction there. Our interest is in -- we're
8 going to have to vote to relicense this plant. We need
9 to know it's reliable when we do that. Now, there's
10 some interconnection between reliability and safety. If
11 it's not reliable, it may not be safe. It may be
12 reliable in emitting too many things into the air it's
13 not supposed to, but it would be unsafe. We can't do
14 that. This is reliable.

15 We know that there are severe economic
16 consequences in -- in rates if this plant does not go
17 forward, but we also know that, if we relicense it
18 without knowing --

19 End Minute 12:15

20

21 March 21, 2008

22 House Natural Resources Committee Disk 90/Track 1

23 Begin Minute 43:00

24 UNIDENTIFIED MALE SPEAKER: And

25 because this is so new, especially for some of us you

1 may not know, and then, you know, over the coming weeks,
2 we'll have a better sense and we'll, obviously, schedule
3 every week and we'll revise it accordingly. But are
4 there particular areas that you think that you feel need
5 to be addressed? And maybe if we can just show those
6 areas, I can figure out who would be best to address
7 them. But what do you see as being some of those areas?
8 Joyce?

9 MS. ERRECART: I keep thinking like a
10 lawyer and I'm so concerned about federal preemption and
11 I'd really like to hear from people about what is within
12 our perimeter because I think that helps to set the
13 tone, you know, helps to focus us on what we can work on
14 and what we can't work on.

15 ***

16 End Minute 44:07

17

18 Begin Minute 46:00

19 UNIDENTIFIED MALE SPEAKER: -- to
20 supply Vermonters before we allowed them to sell it
21 outside or back to the grid at a higher profit. So
22 that's where I'm kind of going from and I'm going to be
23 asking questions about as we go through this thing.

24 UNIDENTIFIED MALE SPEAKER: Okay.

25 Other areas?

1 UNIDENTIFIED FEMALE SPEAKER: I just
2 hate to be a dog about this, but Vermont is not in the
3 relicensing business. We're in the continued operation
4 business. And that's -- that's one of the issues we
5 have to keep very clear on. That's not our purview, is
6 relicensing. So just so that we can work toward the --
7 the language, because that will get us preempted for
8 sure, if we -- if we start doing that.

9 UNIDENTIFIED MALE SPEAKER: That's --
10 and I think that goes back to Joyce's. I think having
11 sooner rather than later. I don't know who would help
12 us understand what preemption is. I'll talk to -- I'll
13 talk to the Department or the Board and figure out who
14 would be best to come and present to us about
15 preemption. Sarah?

16 UNIDENTIFIED MALE SPEAKER: I'm sorry.

17 UNIDENTIFIED MALE SPEAKER: Preemption
18 issues. I will -- I will ask Sarah.

19 End Minute 47:00

20

21 Begin Minute 1:01:00

22 MR. MITCHELL: I just had -- I -- I
23 may think about things simplistically, but it seems to
24 me that my decision on this will be guided totally by
25 how safe is this facility. And it certainly is

1 providing electricity now. I have nothing against --
2 principal against atomic -- atomic energy. My question
3 is how safe is this particular plant. I have -- I have
4 grandchildren living within 20 miles of it.

5 UNIDENTIFIED FEMALE SPEAKER: Mark,
6 that's why we have to hear about preemption early in
7 this process because we're preempted from considering
8 safety.

9 MR. MITCHELL: Um hum.

10 UNIDENTIFIED FEMALE SPEAKER: And we
11 need to understand how carefully we need to talk on the
12 record, you know, with Sarah talking about continued
13 operation versus relicensing. If we have in our record
14 a lot of stuff that we're preempted from considering,
15 could have -- I can't even imagine the kind of legal
16 repercussions that could happen because NRC -- you know,
17 if we do things that we are preempted from doing, I
18 don't even know what NRC could do, but it's not what we
19 want. So we all need to be careful about --

20 UNIDENTIFIED FEMALE SPEAKER: Yes. We
21 do.

22 UNIDENTIFIED FEMALE SPEAKER: About
23 our language here.

24 UNIDENTIFIED FEMALE SPEAKER: Yes. We
25 do.

1 UNIDENTIFIED FEMALE SPEAKER: Because
2 there -- and about what we're looking at. Because
3 things that the federal government tells us we can't act
4 on, then we can't act on and people need to understand
5 what those things are and are not. So --

6 UNIDENTIFIED FEMALE SPEAKER: And
7 that's why I wanted that, you know, laying out of
8 exactly where we come in, what we're considering, what
9 information.

10 UNIDENTIFIED FEMALE SPEAKER: Um hum.
11 Betty?

12 UNIDENTIFIED FEMALE SPEAKER: I would
13 like to see the list of who spoke at -- at the Senate
14 Finance and not only the name, but who they represented,
15 like the Department of Public Service or -- or --

16 UNIDENTIFIED FEMALE SPEAKER: You want
17 a witness list, then, from --

18 UNIDENTIFIED FEMALE SPEAKER: I
19 just --

20 UNIDENTIFIED FEMALE SPEAKER: --
21 Senate Finance?

22 UNIDENTIFIED FEMALE SPEAKER: Yes.

23 UNIDENTIFIED FEMALE SPEAKER: Okay.

24 And -- and then --

25 UNIDENTIFIED FEMALE SPEAKER: We have

1 that already.

2 UNIDENTIFIED FEMALE SPEAKER: And if
3 it's possible that they could talk on, you know, they
4 talk on this repair or they talk on the modification or
5 they talk on the electrical system or the -- you know, I
6 don't know, whether they had people in to talk on
7 different systems and why those systems are all in here.

8 UNIDENTIFIED FEMALE SPEAKER: Um hum.

9 UNIDENTIFIED FEMALE SPEAKER: I read
10 this -- I read this twice now just while I was on the
11 House floor, trying to -- but to me, this -- this looks
12 like pretty good stuff and it covers -- and I would feel
13 safe knowing what the answers were. So if they said
14 it's rotten, I would feel comfortable with that. If
15 they said it's absolutely excellent, I'd feel safe with
16 that with this report.

17 UNIDENTIFIED FEMALE SPEAKER: Okay.
18 Safety -- safe within the realms of reliable electricity
19 for the State of Vermont because we're preempted from
20 safety. But we can consider whether or electric supply
21 is reliable. So, you know, Rachel was next.

22 UNIDENTIFIED FEMALE SPEAKER: What do
23 you mean we're preempted from safety?

24 UNIDENTIFIED FEMALE SPEAKER: We are.

25 UNIDENTIFIED MALE SPEAKER: By law.

1 UNIDENTIFIED FEMALE SPEAKER: NRC.

2 UNIDENTIFIED MALE SPEAKER: By law.

3 UNIDENTIFIED FEMALE SPEAKER: Federal
4 law, we are not allowed -- that is not our purview.
5 Safety is not the State's purview. It's the federal
6 government's.

7 UNIDENTIFIED FEMALE SPEAKER: Nuclear
8 -- safety of a nuclear power plant, we are not allowed
9 to get involved. The federal government has -- has
10 complete authority over the safety --

11 UNIDENTIFIED FEMALE SPEAKER: That's
12 right.

13 UNIDENTIFIED FEMALE SPEAKER: -- of a
14 nuclear power plant. And so that's why I want somebody
15 in here early next week to explain that to us.

16 UNIDENTIFIED FEMALE SPEAKER: But that
17 -- we can vote to keep or not keep the plant based on --
18 on whether we feel --

19 UNIDENTIFIED FEMALE SPEAKER: Not on
20 safety. Reliability. Reliability.

21 UNIDENTIFIED FEMALE SPEAKER: Yes.

22 UNIDENTIFIED FEMALE SPEAKER: Public
23 health. A whole bunch of stuff that --

24 UNIDENTIFIED FEMALE SPEAKER: We'll
25 have that explained.

1 UNIDENTIFIED FEMALE SPEAKER: -- but
2 not safety.

3 UNIDENTIFIED FEMALE SPEAKER: NRC will
4 be in Thursday at two.

5 UNIDENTIFIED FEMALE SPEAKER: Excuse
6 me?

7 UNIDENTIFIED FEMALE SPEAKER: NRC rep
8 -- an NRC rep will be in Thursday at two.

9 UNIDENTIFIED FEMALE SPEAKER: Oh,
10 good. Okay. Because that follows up -- I really want
11 to hear what they're doing right now. While -- while
12 it's not my authority to say whether or not what their
13 doing is right or wrong, I want to know what they're
14 doing. Rachel?

15 UNIDENTIFIED FEMALE SPEAKER: I'm
16 really with Margaret in just needing a 101. What's the
17 process? What do we have authority oversight? And what
18 does general welfare mean? What does continued
19 operation mean versus relicensing? Those very basics I
20 think are going to be valuable. And once that's figured
21 out and figuring out what our purview is and where --
22 what that covers, obviously, not safety, I -- I think it
23 would be valuable to have a neutral expert, you know,
24 not government, not industry, maybe even someone from
25 out-of-state on whatever the area that we are to cover.

1 Someone who's not --

2 End Minute 1:05:51

3

4 March 25, 2008

5 House Natural Resources Committee Disk #92/Track 1

6 Begin Minute 21:50

7 MR. RUSSELL: It's trying to --
8 whether it's high/low, whatever.

9 UNIDENTIFIED FEMALE SPEAKER: So is
10 that putting us on shaky -- shaky preemptive territory
11 because risk, in my mind, is often associated with
12 safety and much of safety is preempted from our
13 consideration. So I think that's something we need to
14 think about.

15 MR. RUSSELL: I think that, if we were
16 to conclude that this was a safety evaluation and we
17 were going to conclude whether it's safe or not, that
18 would be something that is within the jurisdiction of
19 the NRC. But we can look at systems in emergency
20 systems and make an evaluation of whether they are
21 reliable and whether they're functional and will be over
22 the next period of years, even if those might have some
23 connection to safety. They have also connections to
24 financial and -- and system reliability. And so I -- I
25 think that the fact that, okay, we might be looking at

1 some safety systems, doesn't bring in the preemption of
2 the NRC saying, "You can't look at that." You can look
3 at it and assess it with respect to the -- the cost and
4 the future reliability of the system.

5 UNIDENTIFIED FEMALE SPEAKER: I mean,
6 I've got that flagged because I would be inclined that
7 that would have to be carefully articulated because, you
8 know, I think we're in a mess if we get -- if we do
9 something that NRC say is preempted. So I want to work
10 really hard to make sure that whatever we do is not
11 preempted.

12 MR. RUSSELL: Well, first of all, the
13 NRC, as we'll get to that, is invited to participate and
14 be part of the team that does the evaluation.

15 UNIDENTIFIED FEMALE SPEAKER: They
16 don't want to participate. They want to be in charge.

17 MR. RUSSELL: Then I -- all right.
18 Then they can do it this way. But the -- the question
19 is that, if they don't want to participate, I -- I find
20 it odd that they could be then asserting a preemption
21 saying that the legislature itself or the State can't
22 develop its own assessment.

23 UNIDENTIFIED FEMALE SPEAKER: Well, I
24 mean, with regard to safety. Safety in terms of nuclear
25 safety, yes, they preempt us. So I just want to be

1 really careful about that.

2 MR. RUSSELL: I agree. But it doesn't
3 mean we can't look at emergency and safety issues. We
4 can look at them and make a determination that the plant
5 is or is not reliable to run for another 20 years
6 because of the condition of these systems. We wouldn't
7 be declaring that there -- that there's a safety issue
8 which is, therefore, meaning we're turning -- we're --
9 we're not going to continue with the operation of the
10 plant. But all of these are going to be entwined.

11 UNIDENTIFIED FEMALE SPEAKER: I mean,
12 this just sounds a little different than what I
13 understood two and three years ago because I just
14 remember Sarah Hoffman saying, you know, safety is
15 preempted. I mean, certainly OSHA is not preempted.
16 But, you know, in terms of leaving ladders where people
17 could fall over and stuff.

18 MR. RUSSELL: Right. Right.

19 UNIDENTIFIED FEMALE SPEAKER: But she
20 -- she just cautioned us heavily on anything that
21 involved safety.

22 MR. RUSSELL: Yes. I -- I understand.
23 But, still, I think that you can do an assessment of the
24 various systems with respect to reliability and some of
25 those systems are going to have an impact on safety.

1 Just because they have -- just because their emergency
2 cooling system, for example, doesn't mean that that is a
3 very -- that's the primary safety feature. It doesn't
4 mean that you can't assess it for its reliability and
5 structural soundness and all that sort of thing for the
6 -- for the future. It -- it doesn't -- it doesn't
7 preempt that. It preempts us from coming to the
8 conclusion that the plant should be shut down because of
9 safety issues.

10 End Minute 25:42

11

12 Begin Minute 45:00

13 UNIDENTIFIED MALE SPEAKER: And the
14 Senate now is asking for new information, additional
15 information that I would hope could be had by next year
16 so we can stay in the same timeline. Now, whether
17 that's still critical, I don't know. We will hear from,
18 you know, the entities who feel that -- or -- or Entergy
19 being one of them, who have positions about the timeline
20 and we'll have a better sense of that once we hear from
21 them.

22 So keep in mind we are just at, you
23 know, ground -- level -- ground level here in terms of
24 understanding the bill and what we've done in the past
25 and the ramifications of what's presented by the Senate

1 in anything we do. So we have a ways to go yet, so
2 these are all good questions. You'll remember them
3 because we'll have all the folks we need to have help us
4 understand all that before this committee over the next
5 few weeks. Yes.

6 ***

7 End Minute 48:11

8

9

March 27, 2008

10 House Natural Resources Committee Disk #96/Track 1

11 ***

12 Begin Minute 41:30

13

MR. THAYER: No, not a physical

14 inspection. And --

15

UNIDENTIFIED FEMALE SPEAKER: They did

16 all this by document.

17

MR. THAYER: But they would ask, "We

18

want to see the inspection results from the last

19

outage," when people actually put their hands on those

20

materials and did the physical inspections. "We want to

21

see all those results," for example. And so they would

22

-- they ask for, "You bring me the information and show

23

me."

24

UNIDENTIFIED FEMALE SPEAKER: So, did

25

they also do that with the towers that fell? Or what --

1 what part of the plant were they doing when they -- did
2 they do other sections other than the plant itself?

3 Like the towers or --

4 MR. THAYER: The --

5 UNIDENTIFIED FEMALE SPEAKER: -- water
6 towers or whatever.

7 MR. THAYER: Their focus, as I said in
8 the beginning, the Nuclear Regulatory Commission's focus
9 is primarily on nuclear safety. So it would be their
10 first -- obviously, first focus is on the nuclear
11 reactor, systems that support the nuclear reactor, and
12 other systems that interact with those systems that
13 could -- could affect how the plant operates from a
14 nuclear safety standpoint. Now, as it turns out, the
15 cooling towers are not an important system to nuclear
16 safety, so they didn't get an exhaustive review by this
17 particular body.

18 End Minute 42:38

19 ***

20

21 April 15, 2008

22 House Natural Resources Committee Disk #119/Track #1

23 Begin Minute 27:30

24 UNIDENTIFIED FEMALE SPEAKER: Why we
25 did it? Why we did it?

1 UNIDENTIFIED MALE SPEAKER: To be
2 clear.

3 UNIDENTIFIED FEMALE SPEAKER: Because
4 Act -- what 160 did was it added education for the
5 legislature in every other area. What?

6 UNIDENTIFIED MALE SPEAKER: That did
7 that, too. It combined -- it combined -- we had --
8 there was the requirement that the legislature would
9 have to vote on the storage of waste and -- and so there
10 already was a statute on the storage of waste and then
11 we were adding the continued operation, so we combined
12 that in one vote.

13 UNIDENTIFIED FEMALE SPEAKER: Among
14 other things.

15 UNIDENTIFIED MALE SPEAKER: Among
16 other things.

17 UNIDENTIFIED MALE SPEAKER: I
18 remember. I also remember being chided on the floor by
19 one of the -- one of the members of our committee
20 because (inaudible) dry cask storage bill, we did not
21 put in there precisely that the legislature must vote
22 (inaudible). Even though we had in there that the plant
23 could not go forward without the legislature weighing in
24 on dry cask.

25 UNIDENTIFIED FEMALE SPEAKER: Oh,

1 that's right. I remember that.

2 UNIDENTIFIED MALE SPEAKER: Because we
3 didn't say emphatically that (inaudible) continue
4 operation, you know, we got chewed out on the floor.
5 (Inaudible) Act 160 where we implicitly said the
6 legislature (inaudible) vote.

7 UNIDENTIFIED MALE SPEAKER: Well, no.

8 UNIDENTIFIED MALE SPEAKER: Yeah.

9 UNIDENTIFIED MALE SPEAKER: There is
10 nothing in statute that requires a vote.

11 UNIDENTIFIED MALE SPEAKER: I don't
12 agree with that.

13 UNIDENTIFIED MALE SPEAKER: I'll read
14 it to you. I've got it right here. S.124. It says --
15 it says that in order for permission to be given -- in
16 order for that plant to continue to operate, it must
17 have legislative approval. If the legislature does not
18 vote, the -- doesn't even take a vote on it,
19 (inaudible).

20 UNIDENTIFIED FEMALE SPEAKER: It
21 requires a vote.

22 UNIDENTIFIED MALE SPEAKER: Oh, yeah.
23 That's not what I thought you said.

24 UNIDENTIFIED MALE SPEAKER: To go
25 forward.

1 UNIDENTIFIED FEMALE SPEAKER: Yeah, I
2 don't think that's what he said.

3 UNIDENTIFIED MALE SPEAKER: Well, the
4 State knows what it said. If the legislature required a
5 vote. The legislature does not require a vote.

6 UNIDENTIFIED FEMALE SPEAKER: That is
7 correct.

8 UNIDENTIFIED FEMALE SPEAKER: Well,
9 they can be silent, but an action can still occur.
10 That's what you --

11 UNIDENTIFIED MALE SPEAKER: It will
12 occur. An action will occur. That's very different
13 than saying the legislature will either vote thumbs up
14 or thumbs down. The legislature has to vote thumbs up
15 before the plant (inaudible) operation.

16 UNIDENTIFIED MALE SPEAKER: Okay.
17 Thank you.

18 UNIDENTIFIED MALE SPEAKER: Good
19 morning. Kurt Smith, Public Service Department. I have
20 not seen a copy of the latest version, so I can only
21 comment based on what I've heard.

22 We do have a copy of the response to
23 Governor Douglas from the NRC about the inspection and I
24 -- that's what I went up to the Chairman and said this,
25 at least -- I think if people have a chance, if I could

1 make a copy for folks and people have a chance to look
2 at this, perhaps over lunchtime, and then that might
3 help clarify where you want to go with this bill instead
4 of guessing where the NRC goes. I wouldn't say it was
5 definitive, but it shows you how they are willing to do
6 the assessment working with us. And that, I --
7 hopefully, can give -- maybe help you narrow your
8 thoughts on how you want to draft the bill after that.
9 So that's why this might be helpful for you folks to
10 have.

11 This is a -- this is a -- this is a
12 copy of a bill -- I'm sorry a letter from NRC back to
13 Governor Douglas.

14 UNIDENTIFIED FEMALE SPEAKER: We
15 didn't have that last week, right?

16 UNIDENTIFIED MALE SPEAKER: No. No.
17 We just got it. No, we --

18 UNIDENTIFIED MALE SPEAKER: What's the
19 diagnosis and treatment?

20 UNIDENTIFIED MALE SPEAKER: Well, the
21 11th. But there's -- an they've given copies to -- you
22 probably -- I don't know, you haven't seen one, it
23 sounds like, even though you're copied on this. So --

24 UNIDENTIFIED FEMALE SPEAKER: I think
25 this is huge.

1 UNIDENTIFIED MALE SPEAKER: So this
2 will be, I think, helpful. Yeah, we weren't sure when
3 we were going to get this, so we just got it.

4 UNIDENTIFIED FEMALE SPEAKER: So could
5 we all have copies?

6 UNIDENTIFIED MALE SPEAKER: Yes. No.
7 That's why I'm coming to say if I could make -- if I
8 could have -- I only have one copy. If I could ask
9 Katherine to make copies and then, if you folks could
10 then kind of digest this.

11 UNIDENTIFIED FEMALE SPEAKER: Was it
12 CC'd to VSNAP?

13 UNIDENTIFIED MALE SPEAKER: No. But
14 to the leadership here.

15 UNIDENTIFIED FEMALE SPEAKER: I -- I
16 would think it would be CC'd to VSNAP also.

17 UNIDENTIFIED MALE SPEAKER: Well,
18 we'll send it to VSNAP.

19 UNIDENTIFIED FEMALE SPEAKER: Great.
20 Thank you.

21 UNIDENTIFIED MALE SPEAKER: And but I
22 don't -- I -- I haven't seen a copy of the latest draft
23 from Bill Russell, so I --

24 UNIDENTIFIED MALE SPEAKER: So why
25 don't we make sure let's get the copies of the latest

1 draft. We'll get copies, Katherine, before lunch on
2 this. Are there any -- based on -- do you want to just
3 wait, then, and (inaudible)?

4 UNIDENTIFIED MALE SPEAKER: I think
5 this might be helpful in terms of, you know, maybe
6 distilling some of the conversation. I mean, I think
7 some of the things you've already talked about are
8 right. I mean, we're -- we think having the NRC as part
9 of the inspection gets us where we need to be. But if
10 you don't want them or, for whatever reason, there's a
11 divergence of where the NRC is willing to go and what
12 the legislature wants, you would have to get permission
13 from Entergy to -- to bring in a team to look through --
14 do some sort of assessment.

15 UNIDENTIFIED MALE SPEAKER: I just
16 wanted to clarify something. If -- if the NRC only
17 evaluates for safety, the legislature is interested in
18 reliability, as well, which will differ from safety,
19 then it appears -- then it appears to me that we will
20 have to have two separate --

21 UNIDENTIFIED MALE SPEAKER: I think
22 this will help. Let me read a quick sentence.
23 "Therefore, the NRC safety inspections of Vermont Yankee
24 may aid -- may aid the State of Vermont in assessing the
25 reliability of the facility in generating electricity."

1 End Minute 33:12

2

3 Begin Minute 59:30

4 ***

5 UNIDENTIFIED MALE SPEAKER: Joyce?

6 MS. ERRECART: I think this NRC letter
7 has made our situation clearer. And it's not a matter
8 of -- of trust with NRC, it's a matter of they say
9 clearly in that letter they focus only on safety. We
10 are focusing on reliability. You know, they don't even
11 have statutory authority to be concerned about the whole
12 range of things that we're concerned about. And so I'm
13 -- it's verified what -- what I suspected, that what NRC
14 is going to do is not going to answer all the questions
15 that we have. And I think -- I hope that we have
16 consensus that we have the same goals. That we want the
17 best possible analysis done by roughly January of next
18 month -- next year, so that the legislature has what is
19 available, reasonably available, to make a decision next
20 year. And so I think we just have to -- I'm very
21 concerned about the practical difficulty because I think
22 whatever the NRC does is going to take a significant
23 amount of Entergy resources in terms of, you know, staff
24 time to facilitate what it is that they need.

25 UNIDENTIFIED FEMALE SPEAKER: Um hum.

1 End Minute 1:01:37

2

3 April 16, 2008

4 House Natural Resources Committee Disk #121/Track 1

5 Begin Minute 12:00

6 UNIDENTIFIED MALE SPEAKER: -- update
7 any specific structure.

8 UNIDENTIFIED MALE SPEAKER: Thank you.

9 UNIDENTIFIED FEMALE SPEAKER: Thanks.

10 UNIDENTIFIED MALE SPEAKER: Joyce.

11 MS. ERRECART: Does vertical slice
12 audit or vertical audit, is that something that's
13 defined by the NRC or is that a concept that's clearly
14 understood by the NRC?

15 DAVID LEW: I've heard the term
16 vertical slice as taking a system and going from top to
17 bottom of the system, the procedures, every component
18 within the system, how -- how the system is operated,
19 and the -- the vertical slice is an approach that can be
20 used to an inspection. But I'll give you a little
21 history. We talked about the reactor oversight process
22 as evolving over the years and -- and we -- we hope that
23 we are a learning organization and we try and learn from
24 the experience of inspection. We have over the years,
25 over the years of inspection, we've improved our

1 procedures, the details of our inspection procedures and
2 our approach. We used to do what maybe considered
3 vertical slices of inspections back 20 years ago. We
4 did what we used to call SWOPI, Service Water
5 Operational Inspections -- Service Water Operational
6 Inspections, where we looked at service water system.
7 We had another inspection that we called EDSFI's,
8 Electrical Distribution Safety Function Inspections.
9 And we had other types of inspections that we called
10 SSDI, Safety System Design Inspections. Those tend to
11 be more of a vertical slice. Look at the particular
12 components. What we found, as we take all this
13 information, is we think that there was a better
14 approach and that evolved into our component design
15 basis inspection. And rather than look at a system and
16 -- and looking at a system, you may have certain
17 components that have very little risk contribution, you
18 know, and -- and you may be looking at something which
19 doesn't add a lot in terms of margin. What we do is we
20 look at what the function, the functions that we have to
21 carry out to insure that the plant is operating safely.
22 And we look at from -- from that point of view, we look
23 at -- incorporate our risk analysis, which we did not
24 have those two as well developed 20 years ago. We have
25 that developed now and we know what areas of highest

1 risk contributions. We look at those things with the
2 smallest margins. And these are actually various
3 (inaudible) inspections and they identify areas where
4 there can be improvements to increase the margins.

5 That focuses on the most risk-
6 significant safety-related issues of the smallest
7 margins and we believe that that's a better way of
8 approaching inspections and it's evolved over the years.

9 So we've had experience with, I think,
10 what's termed as vertical slices. We've evolved to
11 areas that I think are more robust in giving us a level
12 of confidence that the plants are operating well.

13 UNIDENTIFIED FEMALE SPEAKER: Is -- is
14 vertical audit or vertical slice audit a fairly clear
15 concept in the nuclear industry?

16 DAVID LEW: I don't know that I -- I
17 would not -- I have a vision of what may be a vertical
18 slice. I am not sure if there's a definition for a
19 vertical slice. You know, my view of, when I hear
20 vertical slice, and I am not sure if that's the
21 terminology that everybody will share is, you're looking
22 at the system from top to bottom. You'd be looking at a
23 service water system from top to bottom. Whereas what
24 we try to do is we look at the service water system has
25 a function that supports a diesel generator system.

1 There's operator actions that are needed. You look at
2 all those aspects to make sure that your function -- the
3 safety function is being maintained.

4 UNIDENTIFIED MALE SPEAKER:

5 (Inaudible.)

6 UNIDENTIFIED FEMALE SPEAKER: So
7 you've evolved to the component design basis inspection
8 when evaluating safety. Can you imagine a situation in
9 which a vertical slice, the way you define it, would be
10 more appropriate to evaluating reliability?

11 DAVID LEW: I -- I guess I don't
12 really have a view on that.

13 UNIDENTIFIED FEMALE SPEAKER: Um hum.

14 DAVID LEW: One of the challenges that
15 -- you know, our focus is primarily on safety and
16 security and we -- we look at events and other areas
17 primarily on that basis. There is also the term
18 reliability and we -- we -- and when you talk to me, I
19 think of reliability as reliability of -- of safety
20 systems. There's also the term of reliability in terms
21 of power generation and that's not within our purview.
22 That said, there is overlap between the two. There is
23 overlap in that, you know, you may have a system which
24 impacts both.

25 What we look at is we look at through

1 a lens, though, of safety. So while there may be a -- a
2 plant shutdown, you know, it may be more relative to
3 reliability of electric generation, but, you know, for
4 us, it means less. If it's not complicated, if the
5 safety systems work, the reactor was never -- was never
6 in jeopardy, it has low risk for us. And -- and you can
7 see that in who we grade our -- our thresholds. Is you
8 have to be more than three in seven thousand hours
9 before we go to the next threshold.

10 On the flipside, there may be things
11 that we are very concerned with. If a diesel generator
12 is out of service for an extended period of time, that
13 may cause us to jump a number of colors. But from an
14 electrical generation point of view, that probably has
15 very little meaning.

16 So there -- there is overlap, but we
17 view things through a -- a safety, security prism.

18 One thing that you may get insights,
19 because there's overlap, is, you know, how people -- how
20 procedures are developed and implemented. That may have
21 commonality in both.

22 So I -- I don't think I have a view on
23 how best to look at the aspect of the electrical
24 generation reliability, nor should I. It's not really
25 within our purview.

1 UNIDENTIFIED MALE SPEAKER: And maybe
2 that fits well with my question. And that is, as you
3 pointed out earlier, we had a cooling tower collapse and
4 that's heightened concerns by many in Vermont about the
5 reliability and the safety of the plant. And then we
6 have your testimony today which talks about the 20 --
7 over -- you know, the thousand -- seven thousand plus
8 hours that you put in and NRC puts in to evaluate the
9 safety of this plant. So what do we tell to the public,
10 to Vermonters, about that disconnect? How do we explain
11 that? And, specifically, NRC's role in that, and -- and
12 Entergy's role? Who is responsible for what? Is that
13 an understandable question?

14 DAVID LEW: Yes. That's a very tough
15 question.

16 UNIDENTIFIED FEMALE SPEAKER: I also
17 think that that's one of the questions on the 12 that we
18 offered.

19 DAVID LEW: Right. And -- and we can
20 try and answer those questions and we can skip the
21 questions that we already covered, if that's okay. I --
22 I --

23 UNIDENTIFIED MALE SPEAKER: Could we
24 just start with this question.

25 UNIDENTIFIED FEMALE SPEAKER: Yes.

1 UNIDENTIFIED MALE SPEAKER: It's a
2 good segue.

3 UNIDENTIFIED FEMALE SPEAKER: Yes. It
4 is.

5 DAVID LEW: Okay. You know, I guess
6 if I go back to what the NRC does, again.

7 UNIDENTIFIED MALE SPEAKER: Um hum.

8 DAVID LEW: You know, we just view
9 things from a security and safety point of view and --
10 and while there's overlap and we will focus on things
11 which may be from an electrical generation point of view
12 that -- that you -- you know, others may focus on that
13 we would not focus on and visa-versa. Our focus still
14 has to be on safety and security and that goes really
15 back to our -- our charter from Congress. You know, to
16 prevent that -- separate that conflict of interest. We
17 really can't have us crossing that line. That is not to
18 say that we don't look at those issues that there are
19 overlap. We do look at it. But when we step back and
20 assess the significance relative to reactor risks, it
21 tends to be low.

22 While the cooling tower 2-4 collapsed
23 last year in -- in August was a very public event. From
24 a reactor risk and what the NRC does, it's a very, very,
25 very low significant issue.

1 That said, we did take a look at those
2 activities because there is overlap and we looked at it
3 to understand what the impact is on the safety-related
4 cell. And I would say that even with the safety-related
5 cell, that the risk contribution of that safety-related
6 cell was still very low, but it is part of their
7 requirements, part of our license requirements for them.
8 We will look at the potential implications of that on
9 the cell. In fact, our reactor oversight process allows
10 us to identify those performance weaknesses, even those
11 outside the safety-related area. And we did identify a
12 finding associated with that failure back in August,
13 although it was a green finding because of the risk
14 significance.

15 I am not sure that that answers your
16 question, necessarily, but that's --

17 UNIDENTIFIED MALE SPEAKER: Well, let
18 me phrase it -- in part. Let me phrase it another way.
19 So there's been criticism. What I've heard is criticism
20 of the NRC, you know, how can we trust the NRC to do a
21 good inspection of this plant when they have an ongoing
22 inspection and -- and recently had, I guess, a more in-
23 depth inspection, and yet you can have the collapse of a
24 cooling tower? I think I know the answer, but I just
25 want you to just articulate that answer again.

1 DAVID LEW: Yes. I'll focus on the
2 inspection program. Again, it's on the high-risk areas
3 for -- for reactor safety and we were focusing most of
4 our samples in that particular area. We will spend less
5 time on areas that don't contribute to risk, but we do
6 have processes that detect and account for those
7 changes. For example, that collapse in the cooling
8 tower, that was input into one of our performance
9 indicators.

10 UNIDENTIFIED MALE SPEAKER: That was
11 what? I'm sorry?

12 DAVID LEW: That was an input into one
13 of our performance indicators.

14 UNIDENTIFIED MALE SPEAKER: Okay.

15 DAVID LEW: We not only have a
16 performance indicator that talks about unplanned
17 shutdowns, but we have a performance indicator that
18 talks about unplanned power reductions greater than I
19 think 20 percent. So we do factor that in. How -- how
20 much -- how proactive it is relative to those -- those
21 systems that are less -- lesser significant, it's less
22 so than those areas that are more significant.

23 MARJORIE MCLAUGHLIN: I think if I
24 could add on one thought also. You know, it is
25 certainly a mandate of the NRC to conduct our affairs in

1 as public a manner as possible. And -- and, you know,
2 as Dave mentioned, we -- we will have a -- a public
3 meeting, as we do every year, and we'll have I think on
4 May 12th, we'll be having our -- or mid-May we'll be
5 having our public meeting in Brattleboro to talk about
6 our assessment of Vermont Yankee's performance. And so
7 that's an opportunity that -- that we provide to the
8 public to hear what feeds into our assessment of the
9 plant safety. So, you know, it is incumbent upon us to
10 get the -- to explain to people why we think what we
11 think about the plant and we make every effort to make
12 our documentation available to people and to have --
13 provide folks the opportunity to ask us questions and
14 speak to us personally about how we've reached our
15 decisions and determinations, so --

16 UNIDENTIFIED MALE SPEAKER: Okay.
17 And we -- we, obviously, are very concerned about the
18 reliability of the plant. And specifically from, you
19 know, knowing that Vermont Yankee produces a third of
20 our power at a reasonable cost, you know, it's a concern
21 for us that between now and 2012 it remain reliable.
22 And if it does get its extension, that it remain
23 reliable and we're looking at it from a cost
24 perspective. With that said, how do -- it sounds like
25 for those systems that aren't critical risk systems,

1 like the cooling tower, what kind of assurances, then,
2 do we have that those systems that aren't within that
3 high risk are adequately being maintained to insure the
4 reliability of the plant?

5 DAVID LEW: And -- and I think from --
6 from the NRC's oversight process, as I mentioned, we do
7 take a look at those issues, those events. We do take a
8 look at those events from what they mean relative to the
9 licensee's inspection processes, procedures, maintenance
10 practices. And we do engage the licensee to insure that
11 we understand what their corrective actions moving
12 forward are. So I would say, you know, for those
13 specific events, there are actions that are in place to
14 preclude their occurrence.

15 UNIDENTIFIED MALE SPEAKER: You
16 earlier said that degradation at one plant triggers
17 inspections at others.

18 DAVID LEW: We have a process, an
19 operating experience process where we will look at
20 operating experience and we -- we -- I share a morning
21 meeting every morning where all the information comes in
22 from the plants. We have a headquarters office on the
23 line and there are actually people in our headquarters
24 office that is in the operating experience group. What
25 we do is we collect that information and we will make

1 determinations of the significance. If the -- if there
2 is a degradation that is very significant, the response
3 is going to be much, much greater. If there are some
4 insights that we get from certain plants, we may share
5 it with residents. One, the lowest -- lowest activity
6 would just be to make sure that the licensees are aware
7 of it and that they can factor in. If we think that
8 they're -- it goes below a threshold and it's a judgment
9 call by the management team, we may ask the inspectors
10 to actually go and look at it directly. So it's a
11 graduated approach, but there is a process that we
12 insure that we take operating experience from one plant
13 and make sure that we learn from that and apply to other
14 plants as well.

15 UNIDENTIFIED MALE SPEAKER: So the
16 degradation of the cooling towers at the other plants
17 where it took place did not trigger the inspection at
18 Vermont Yankee. It was insignificant in your -- in your
19 view?

20 DAVID LEW: The cooling tower did not
21 -- did not initiate an inspection within the region one
22 office. There -- there are actually not very many
23 plants with that type of cooling towers; very few, in
24 fact. Most of the plants in region one either take
25 their -- they don't have -- they don't have cooling

1 towers, to begin with. They take their cooling from --
2 directly from the river or they have the large parabolic
3 type cooling towers.

4 In region one, there is only one other
5 plant that I know of that has this type of cooling tower
6 and that's at Peach Bottom, but there it's not -- it has
7 no safety function, and it has no even operational
8 function. So it's somewhat unique, this cooling tower,
9 for region one.

10 I believe there are other cooling
11 towers, not very many, outside of region one, but I
12 really can't talk to those specifics because I just am
13 not aware.

14 UNIDENTIFIED MALE SPEAKER: Joe.

15 UNIDENTIFIED MALE SPEAKER: I
16 apologize for not being here earlier. I was in another
17 committee and if you've answered this, then -- then I'll
18 get it from committee members. But I'm looking for
19 indicators that it's going to give me a crossover from
20 what you do in the safety and security to what we're
21 looking for in the reliability that we've got to answer
22 to the people of Vermont within the next two years. But
23 if you were to go in, in the area of safety and
24 security, and you were to do a finding that showed me or
25 told me that you have concerns about any nuclear plant

1 following either nuclear regulations or their standard
2 operating procedures, would that be written in a way
3 that I could look at it and say, if there's problems
4 there found by the NRC, then I need to look at how those
5 procedures are in the other areas that you don't
6 consider significant? And if you follow what I'm
7 talking?

8 DAVID LEW: Yes.

9 UNIDENTIFIED MALE SPEAKER: And -- and
10 let's say, you know, standard operating procedures or
11 whether its maintenance or scheduled maintenance or
12 training or anything like that. Would it be clear to me
13 that I should look deeper in those things that you're
14 not looking at to -- to assess reliability?

15 DAVID LEW: I think it would vary,
16 depending on the issue as being documented. There may
17 be issues which it may be clear. There are issues that
18 are not so clear.

19 Now, there's -- you know, we talk
20 about the Vermont Yankee trip that occurred about a year
21 ago due to -- due to poor lubricating processes for
22 their valve. You can draw from that some issues with
23 the maintenance -- maintenance practices there and we
24 identified that as a finding. We documented the issues
25 that we believe that was deficient. So it documents

1 where the area of concern is from a -- how much do you
2 extrapolate from that. That's one of the areas that we
3 do, do look at is, okay, where -- where -- what other
4 areas have this poor practice, not been -- have been
5 exercised. And that's part of what we look at as the
6 (inaudible) commission. So you -- you will -- you will
7 see a sense of, well, there's an overlap there relative
8 to reliability because the plant tripped, and but
9 there's also a characterization of what the performance
10 issue is and also the extent to which we may have looked
11 at other areas. Does that --

12 UNIDENTIFIED MALE SPEAKER: Yes. I
13 think I -- so what I think I'm hearing is I could look
14 at what you were looking at in the safety and security
15 area and I could draw some conclusions and it would be
16 up to my interpretation whether or not --

17 DAVID LEW: Yes.

18 UNIDENTIFIED MALE SPEAKER: -- if I go
19 in the other areas, whether it's serious or not. I
20 mean, the example you gave, if I was going in there, I
21 would obviously want to look at other maintenance
22 procedures in other areas that affect reliability.

23 DAVID LEW: Electric generation
24 reliability.

25 UNIDENTIFIED MALE SPEAKER: Yes.

1 DAVID LEW: And we -- you know, we do
2 monitor inputs on, you know, relative to -- we talked
3 about plant trips and we talked about unplanned power
4 reductions. There's -- there's a nexus there between
5 electric generation reliability, but we look at it from
6 a safety point of view, as well, because that's what we
7 call -- that's one of the cornerstones that we talked
8 about, the seven cornerstones in initiating events.
9 But, you know, again, it was through a lens of -- the
10 risk significance is lower for us, but there is that
11 overlap and we do want to make sure that, as these
12 events accumulate, they can, actually, cross over into
13 thresholds that we would respond to more vigorously.

14 End Minute 32:00

15

16 Begin Minute 54:00

17 UNIDENTIFIED FEMALE SPEAKER: I don't
18 see that, really, that -- that is the same as changing
19 your process because we keep seeing this silo of safety
20 and security as being the bailiwick of the NRC, which is
21 absolutely understandable, and there's reason, perhaps,
22 that there's no precedent for having another team that's
23 looking at the other silo of reliability because,
24 frankly, there may not be a percent for a state relying
25 on one nuclear power plant for a third of its power,

1 which is a huge percentage. It is essentially to the
2 State in a situation like this to make sure that, you
3 know, for the people relying on this electricity, that
4 they can get entering into another long-term contract,
5 that this will remain in place.

6 Leaving aside the silo of safety and
7 security, we have an obligation to look at reliability
8 as well. Therefore, whether or not the NRC has a
9 precedent or would allow it, whether Congress by
10 extension would allow it, I really see as a different
11 situation. And I know you can't comment on the bill,
12 but I -- I just want to clarify that in general. That
13 we are really bound to look at reliability as well.

14 End Minute 55:00

15

16 Begin Minute 1:02:30

17 UNIDENTIFIED FEMALE SPEAKER: So we
18 interrupted you as you were answering the question. You
19 were talking about --

20 DAVID LEW: Oh, yeah.

21 UNIDENTIFIED FEMALE SPEAKER: --
22 interface with (inaudible) inspections.

23 DAVID LEW: Well, interface with --
24 yeah -- from -- from an oversight process, we do take a
25 look at the input reports, again, to want to make sure

1 that we are aware of any safety issues. That we
2 understand whether or not -- you know, we do an
3 assessment and our assessment is safety and security
4 focus, input assessment may be more toward the
5 excellence, but we want to make sure that there's not
6 any -- if there is a delta, we want to understand it.
7 Are we missing anything? You know, is there some other
8 areas that we need to reflect on our own processes. So
9 we do have that interface and that dynamic that occurs.

10 UNIDENTIFIED FEMALE SPEAKER: And if
11 that delta happens to be in an area that's leaning
12 towards reliability versus safety, but there's that
13 obvious interface between the two, do you comment on
14 that, if it's something that's totally --

15 DAVID LEW: We -- we don't comment on
16 that.

17 UNIDENTIFIED FEMALE SPEAKER: Thank
18 you.

19 ***

20 End Minute 1:04:02

21

22 April 16, 2008

23 House Natural Resources Committee Disk #122/Track 1

24 Begin Minute 11:00

25 DAVID LEW: I think we talked a little

1 bit about what our role is and how there may be some
2 overlap. Is there any specifics that we want to talk
3 about again? The scram and the cooling tower and how we
4 -- we look through the lens of safety and security while
5 there's overlap with reliability for -- for electrical
6 generation.

7 UNIDENTIFIED MALE SPEAKER: Betty.

8 UNIDENTIFIED FEMALE SPEAKER: My
9 question is kind of general around those lines and,
10 again, I apologize if you've answered this in some way
11 previously. But you -- you had said when talking about
12 one of the previous questions that it's not an NRC
13 requirement. If --

14 DAVID LEW: I'm sorry --

15 UNIDENTIFIED FEMALE SPEAKER: -- and I
16 understand your purview. You have a specific purview.

17 DAVID LEW: Right.

18 UNIDENTIFIED FEMALE SPEAKER: That is
19 mandated through Congress, what you really won't do. If
20 you -- if you see that within your prescribed purview
21 now that there really -- it really made sense to expand
22 that because of changes that you're seeing in which
23 something is starting to affect the safety side of the
24 business more than initially and so on and so forth, is
25 there an easy manageable process by which NRC can

1 request a purview change permanently, you know, this is
2 our -- you know. And has that ever been done? And what
3 would happen if your purview became much closer linked
4 to reliability and would that ever be a suggestion by
5 the people on the ground, as opposed to Congress out.

6 DAVID LEW: Yes. The -- and -- and
7 we're talking about purview, I guess we -- I -- I view
8 it as there's two different goals that are separate.
9 Okay, one is safety and security and there's one which
10 is electric reliability.

11 UNIDENTIFIED FEMALE SPEAKER: Um hum.

12 DAVID LEW: Which that's clearly not
13 within our purview and I don't think we would ever
14 request to go into that because that's an issue of a
15 state's rights. I mean, you get into areas within the
16 constitutions that we don't have a right to be there.

17 End Minute 13:06

18

19 House Natural Resources Committee Disk 122/Track 2

20 Begin Minute 5:00

21 UNIDENTIFIED FEMALE SPEAKER: And that
22 in some way blends with the -- the type of inspection
23 that the NRC does that is on the safety side of the
24 business. If the State of Vermont has questions
25 specific to some areas that the NRC would not typically

1 go 100 percent on and they go 80 percent of the way and
2 we were looking for an independent team, an oversight
3 committee, a group that goes beyond the group within
4 Vermont Yankee to further inspect those specific areas,
5 how do you see Vermont Yankee working in that measure?
6 And it's kind of the same question I had asked NRC which
7 is, you know, they're going to only bring it so far, but
8 is there anything that Vermont Yankee would be opposed
9 to as far as that other group picking up that piece and
10 carrying it the last 20, you know, 20 yards so that the
11 State of Vermont feels that, with the help and
12 cooperation of NRC and Entergy, our independent group
13 can answer that final question that may not typically
14 get answered or in a typical setting?

15 JOHN DREYFUSS: I understand the
16 question. Again, I haven't seen any specifics of what
17 that would look like, so it's inappropriate for me to
18 jump in and comment on that without -- without knowing
19 the details of what that would look like. What I will
20 restate is that it is my experience that -- that 80
21 percent or that piece -- the NRC goes a very long way
22 towards looking at these reliability issues and
23 certainly those kind of key things that would drive
24 downturns in power, plant reactor trips, that would get
25 or could get a look through the process. So we don't

1 know what that process looks like yet and I think let's
2 let the Department and the NRC show us what that would
3 look like and we can comment on that.

4 UNIDENTIFIED FEMALE SPEAKER: That
5 maybe isn't my question, though. If we -- once we know
6 what that looks like and we're hoping that it will go 80
7 percent, 90 percent of the way, is there -- is there any
8 reason why Entergy wouldn't be supportive of helping us
9 go the other 10 percent? The other 20 percent?

10 JOHN DREYFUSS: Again, I would like to
11 see what the Department and the NRC can do in terms of
12 developing an inspection. It is my experience that they
13 will go a very long way in terms of addressing those
14 kind of key reliability issues that are being -- being
15 looked for. So I can't agree at this point to -- to any
16 additional inspection beyond -- beyond that. We haven't
17 seen what that would look like.

18 UNIDENTIFIED FEMALE SPEAKER: Okay.
19 Thank you.

20 End Minute 8:05

21 ***

22

S.289 (2010)

JOURNAL OF THE SENATE

196

H. 763.

An act relating to establishment of an agency of natural resources' river corridor management program.

To the Committee on Natural Resources and Energy.

Third Reading Refused

S. 289.

Senate committee bill entitled:

An act relating to approval for continued operation of the Vermont Yankee nuclear power station.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator Scott, moved to commit the bill to the Committee on Economic Development, Housing and General Affairs, which was disagreed to on a roll call, Yeas 6, Nays 24.

Senator Scott having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Brock, Flory, Mazza, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Shumlin the Senate recessed until one o'clock and forty-five minutes.

Called to Order

At two o'clock in the afternoon the Senate was called to order by the President.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Mullin, Brock, Flory and Scott move to amend the bill as follows:

First: In Sec. 1, by striking out subsections (d) through (f) and inserting in lieu thereof the following:

(d) Under current law, until the general assembly acts under 30 V.S.A. § 248(e)(2), the public service board – the expert body created by the general assembly to make evidence-based determinations on matters relating to electric power – cannot issue a final order in its pending proceedings in Docket No. 7440 on the questions of continued operation of the VYNPS and storage of spent fuel at the station beyond the currently scheduled closure date.

(e) In accordance with 30 V.S.A. § 248, in its decision in the pending proceedings, the public service board will consider the need for electric energy from the VYNPS, the consistency of the station with state energy planning, the issues of reliability and electric system stability, the economic benefit of the VYNPS and the power it generates to the state and its residents, and the other criteria required by statute.

(f) The general assembly should make its determinations regarding the continued operation of the VYNPS and storage of spent fuel at the station so that the public service board may complete its ongoing proceedings, apply its professional expertise, and issue a final order in Docket No. 7440 that is based on the evidence before it.

Second: By striking out Secs. 2 and 3 and inserting in lieu thereof new Secs. 2 and 3 to read as follows:

Sec. 2. VERMONT YANKEE; CONTINUED OPERATION; APPROVAL

(a) Provided that each of the conditions contained in subsection (b) of this section is met, the general assembly:

(1) determines that continued operation of the Vermont Yankee Nuclear Power Station (VYNPS or the station) for up to 20 years following its currently scheduled closure date of March 21, 2012, will promote the general welfare of this state; and

(2) finds that storage of spent nuclear fuel derived from the operation of the VYNPS for up to 20 years following the currently scheduled closure date will promote the general good of this state.

(b) The general assembly approves until up to March 21, 2032, the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the operation of the station, provided that each of the following conditions is met:

(1) By March 1, 2011, Entergy Nuclear Vermont Yankee, LLC (ENVY), the station's owner, executes a power purchase agreement (PPA) with Vermont's two largest investor-owned retail electricity providers that, starting in 2012, commits at least 115 MW of the output of the VYNPS to such

JOURNAL OF THE SENATE

198

providers for the period of continued operation of the station approved by the public service board at a price not to exceed 125 percent of the price currently paid by such providers under the existing PPA approved by the board in Docket No. 6545.

(2) By June 30, 2010, ENVY shall obtain approval from the Vermont public service board of an ongoing reliability and maintenance plan for the VYNPS that meets at least each of the following:

(A) The plan provides for a full inspection within six months of the plan's approval of all aboveground and underground structures, components, facilities and pipes, and periodic inspection of the same at a frequency deemed necessary by the Vermont department of health. For the purpose of this section, the term "underground" includes all structures, components, facilities, and pipes that are below grade whether they are in contact with earth or in a concrete vessel.

(B) The plan provides for prompt repair or replacement of all structures, components, facilities and pipes that are identified through an inspection under subdivision (2)(A) of this subsection as requiring repair or replacement.

(C) The plan ensures compliance with all recommendations of the Reliability Assessment of the Vermont Yankee Nuclear Facility (Nuclear Safety Associates, Dec. 22, 2008) and the Report of the Public Oversight Panel on the Comprehensive Reliability Assessment of the Vermont Yankee Nuclear Power Plant (March 17, 2009).

(3) ENVY shall implement the plan required by subdivision (2) of this subsection in accordance with the terms of the public service board's approval.

(4) ENVY shall be liable to pay, within 30 days of receipt of an invoice, the reasonable costs of the department of health, the department of public service, and the agency of natural resources in inspecting and monitoring the VYNPS. This liability shall continue after the VYNPS ceases operation with respect to inspection and monitoring of the condition of and postclosure activities at the VYNPS site and environs. In the event that the reasonableness of such costs is disputed, the public service board shall have jurisdiction to resolve such dispute.

(5)(A) By March 1, 2011:

(i) ENVY shall provide the public service board with the written agreement of Entergy Corporation of New Orleans, Louisiana (Entergy Corp.), the ultimate parent of ENVY, to guarantee the full funding of all postclosure activities necessary at the VYNPS, including decommissioning of the station,

on-site management of spent fuel, and return of the site to a “greenfield” condition as defined by the public service board in its order of June 13, 2002, Docket No. 6545; and

(ii) ENVY shall obtain, after notice and opportunity for hearing, the board’s approval of the form and terms of such guarantee.

(B) A refusal of Entergy Corp. to provide the guarantee required by this subdivision (5) shall be considered noncompliance by ENVY with this subdivision.

(6) Notwithstanding 30 V.S.A. § 107 or any other provision of law, the following is prohibited: a transfer of a controlling interest in ENVY or Entergy Nuclear Operations, Inc. (ENO), the operator of the station, unless each of the following applies:

(A) Entergy Corp. remains liable with respect to the guarantee required by subdivision (5) of this subsection.

(B) The new owner of ENVY or ENO or both makes the same guarantee required by subdivision (5) of this subsection and is independently liable with respect to that guarantee.

(7) From March 21, 2012, until the end of the period of continued operation of the VYNPS approved by the public service board, ENVY shall continue to fund the clean energy development fund established under 10 V.S.A. § 6523 in an annual amount determined acceptable by the board, to be no less than the amount paid by ENVY under memoranda of understanding with respect to the VYNPS approved by the board prior to January 1, 2010. ENVY shall obtain the public service board’s approval of such annual amount on or before March 1, 2011.

(8) The VYNPS shall obtain from the public service board and any other agencies such certificates, permits, and approvals related to continued operation of the VYNPS and storage of spent fuel at the VYNPS as are required by law.

(c) This act does not require the public service board to approve the continued operation of the VYNPS and the storage of spent nuclear fuel derived from the continued operation of the VYNPS beyond March 21, 2012. However, if the board determines to issue such approval, the board shall include the conditions of subdivisions (b)(1) through (7) of this section in any such approval. The board may include such other conditions as it reasonably deems appropriate, including conditions that are more stringent than those required by subsection (b) of this section.

JOURNAL OF THE SENATE

200

Sec. 3. EFFECTIVE DATE; APPLICATION TO PENDING PROCEEDINGS

(a) This act shall take effect on passage.

(b) The public service board may complete its pending proceedings in Docket No. 7440 and its consideration of all issues under the relevant statutes, including the need for electric energy from the VYNPS, the consistency of the station with state energy planning, reliability and electric system stability, and the economic benefit of the VYNPS and the power it generates to the state and its residents. The board may issue a final order in Docket No. 7440.

(c) Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to proceedings pending before the public service board as of this act's effective date.

Which was disagreed to on a roll call, Yeas 5, Nays 25.

Senator Mullin having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Brock, Flory, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Flory, Brock, Mullin and Scott move to amend the bill as follows:

First: In Sec. 1, by striking out subsections (d) through (f) and inserting in lieu thereof the following:

(d) Whether or not the VYNPS continues operation after March 21, 2012, the station will not operate indefinitely.

(e) Whenever the VYNPS ceases operation, its contribution to Vermont's energy supply – currently about one-third of the electricity consumed in the state – will need to be replaced.

(f) Replacement of VYNPS power is likely to increase reliance on the spot market for electric energy, therefore exposing the state to sudden and unanticipated price fluctuations that are beyond Vermonters' control, the threat of foreign imposed oil embargoes, and a potential increase in Vermont's

S.289 of 2010

Committee Hearings

Senate Committee on Finance

- **Feb.** 17, 18

Senate Floor

- **Feb.** 19: Introduced by Senate Committee on Finance
- **Feb.** 24: Sen. Cummings reports for Senate Committee on Finance; Sen. Lyons reports for Committee on Natural Resources and Energy; bill not passed

The Vermont Legislative Bill Tracking System

Legislative History: Committee Meetings by Bill 2009 - 2010 Legislative Session

Committee Meetings where S.0289 was considered:

Meeting Details:

Committee(s): **Senate Committee on Finance**
Hearing Date: **02/17/2010**
Hearing Type: **Standard**
Comment:
Public Record ID:

Meeting Record:

S.289 - An act relating to approval for continued operation of the Vermont Yankee nuclear power station
Review bill

Aaron Adler, Legislative Counsel

[Complete Meeting Details](#)

Meeting Details:

Committee(s): **Senate Committee on Finance**
Hearing Date: **02/18/2010**
Hearing Type: **Standard**
Comment:
Public Record ID:

Meeting Record:

S.289 - An act relating to approval for continued operation of the Vermont Yankee nuclear power station

Testimony: Entergy, electric utilities, Department of Public Service invited

Kenneth R. Theobalds, Vice President Government Relations, Entergy Nuclear
David O'Brien, Commissioner, Department of Public Service
Brian Keefe, Vice President, Government and Public Affairs, Central Vermont Public Service
Stephen Kimbell, Lobbyist, Green Mountain Power
James Moore, Clean Energy Program Manager, Vermont Public Interest Research Group
William Driscoll, Vice President, Associated Industries of Vermont
Bob Stannard, Vermont Citizens Awareness Network
Raymond Shadis, Consulting Technical Advisor, New England Coalition
Paul Blanch, Energy Consultant, Hartford, CT

[Complete Meeting Details](#)

Vermont State Senate - Act S.289 of 2010

As recorded on February 24, 2010

Janice D. Badeau
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364
A-1504

1 The Senator from Rutland District?

2 SENATOR FROM RUTLAND: Sir, I just
3 wanted to say that, although I thought I was clear with
4 my thumbs down, I can certainly understand, based on the
5 follow-up conversation that we had, how the Senator from
6 Windham misunderstood and I don't want to -- anybody to
7 think that my colleague from Windham is trying to pull a
8 fast one. I just -- I -- I thought I was clear with my
9 thumb down.

10 PRESIDENT: Thank you, Senator. The
11 Chair would like to recognize the Senator from
12 Washington District. The Senior Senator from Washington
13 District.

14 SENATOR FROM WASHINGTON: No, middle.

15 PRESIDENT: Middle Senator. That's
16 right. I'm sorry. I apologize. I apologize. The
17 respected member from Washington District.

18 SENATOR FROM WASHINGTON: Thank you,
19 Mr. President. And by the time I am finished my
20 presentation, I hope that there is no doubt that the
21 Senate Finance Committee has followed strict procedure,
22 has handled this bill like every other bill, has gone
23 through a deliberative process which has, in fact, taken
24 about four years.

25 You have on your desk a 15-page

1 handout. It lists for at least the 12, first 12 pages
2 the dates and the committee topics and the witnesses
3 that we took on the Vermont Yankee and then the last two
4 pages are related -- related topics.

5 Also on your desk you're going to see
6 some organizational charts, first of Vermont Yankee and
7 Entergy Corporation and then of the Enexus. As I go
8 through those, it might be helpful.

9 And the third handout that we have is
10 some documents that were supplied by our consultant
11 which are taken from Enexus Energy Corporation's SEC
12 filing for the formation of Enexus and it lists the
13 risks that the company, Entergy, sees for their success.
14 And then the second page lists the change in their debt-
15 to-equity ratio.

16 So as I go through, I'm not going to
17 go into a lot of detail, but we want you to have that as
18 backup.

19 Okay. S.289, and it has a number, I
20 had to learn that today, is a committee bill and it is
21 being brought to you by the Finance Committee to fulfill
22 our obligations under Act 160 and it is written to
23 mirror the requirements of Act 160. It finds that it is
24 in the public welfare to for Vermont Yankee to --

25

1 End Track 27

2 Begin Track 28

3

4 -- to continue. And we have to do this according to the
5 law so that the Public Service Board can then go forward
6 with its process to issue a certificate of public good
7 which is necessary for Entergy's license to be extended.

8 It is being brought to you without
9 recommendation from the Committee. This is a very
10 important issue and one we feel that every Senator
11 should have the ability to make their own decision on.

12 What I'm going to do is walk you
13 through the facts, through chronology, as we have
14 learned it, and I'm going to walk you through the
15 concerns that we have and then leave it up to your best
16 judgment as to how you vote should go.

17 Way back when, Vermont Yankee opened
18 in 1972. It's a 530 megawatt boiling water nuclear
19 reactor. It's located on 125 acres of land in -- on the
20 edge of the Connecticut River in Vernon, Vermont.

21 At that point, it was owned by a
22 conglomeration of utilities, primarily Green Mountain
23 Power and CVPS. Vermont utilities. Regulated
24 utilities.

25 In 2002, the Public Service Board

1 approved the sale of Vermont Yankee to Entergy Nuclear
2 Corporation and ENVY. And you're going to hear a lot of
3 EN's and VY's. There are numerous -- if you look on
4 that whole -- that chart we gave you, you'll see that
5 there are numerous holding companies. The two to
6 remember are Entergy Louisiana, which is the parent
7 company, and ENVY, which is Entergy Vermont Yankee,
8 which is a limited liability corporation.

9 At the time of sale, the Board was --
10 had two reasons. The first was the very favorable
11 purchase power agreement that was given to the State of
12 Vermont. Entergy provided our utilities with up to 280
13 megawatts of electricity at \$42 a megawatt, or that
14 translates into 4.2 cents a kilowatt hour, which is how
15 we usually refer to it. And the ability to turn the
16 responsibility for decommissioning and the
17 decommissioning fund over to Entergy.

18 You remember at that time the
19 utilities were going through some very difficult times.
20 There were words like bankruptcy is acceptable. They
21 were in trouble with the Public Service Board over the
22 Vermont Yankee -- or not the -- the Hydro Quebec
23 contract and whether or not that was prudent. Up until
24 that time, the Vermont utilities had been putting
25 between 10 and 13 million dollars a year into the

1 decommissioning fund. And at the time of sale, it was
2 thought that that fund was more than adequate to cover
3 decommissioning costs. If the plant were
4 decommissioned, as envisioned at that time, the license
5 ended in 2012 and it was anticipated that the plant
6 would be closed. Decommissioning would be completed
7 about 2022. Takes about 10 years to decommission a
8 plant completely. And there was concern about our
9 utilities' ability to maintain that -- that -- that
10 financial responsibility.

11 This is the Board order and I'm going
12 to read two things. It becomes clear in here that the
13 Board understood that Vermont Yankee ENVY, Entergy
14 Nuclear Vermont Yankee, ENVY, was a limited liability
15 corporation. It owns -- it would own the
16 decommissioning fund and the plant and the power
17 contracts. But the revenues flow to the mother -- the
18 mother company. And it is understood, and I'm going to
19 give you a couple quotes, at that time, that the mother
20 company would be standing behind Entergy and providing
21 them with the fiscal resources that they need.

22 First is from page three. It says the
23 safe operation of Vermont Yankee is a critical concern
24 for residents of Vermont, ENVY and ENO, which is one of
25 the holding companies, on their own and through the

1 ability to tap the broader resources of their parent,
2 Entergy Corporation, have expertise in the ownership and
3 safe operation of nuclear facilities and the ability to
4 access greater resources than the present owners.

5 And then further on in page 151, okay,
6 in other words, the financial assurances that Entergy
7 has agreed to provide ENVY --

8

9 End Track 28

10 Begin Track 29

11

12 -- will be sufficient to insure that ENVY has the
13 resources it needs to operate and to eventually close
14 and decommission Vermont Yankee.

15 So it was understood at that time by
16 the Board that the parent company would be standing
17 behind Entergy. But this, as we go through, you'll see
18 that part of our concern and our ongoing concern has
19 been the decommissioning fund and the continuation of
20 that commitment by the parent company.

21 And I wanted to read to you some
22 chapters. This is the GDS Associates report which was
23 done for the Department of Public Service in 2009 as, I
24 believe, the results of Act 160. And it states on page
25 five and six -- on page six -- Entergy Corporation,

1 which was a pioneer in establishing separate corporate
2 entities to own and operate nuclear power plants and
3 today owns and operates 11, today it's six, nuclear
4 units through an extensive network of wholly owned
5 subsidiaries. And just prior to they've said,
6 specifically, ENVY's current corporate structure
7 presents a particular concern. Where a parent
8 corporation inserts several layers of LLC's between
9 itself and the entity operating the high-risk business,
10 each of these intervening LLC's can act as a barrier to
11 extending liability to the parent corporation that
12 contains most of the assets. If a nuclear plant was
13 unable to cover its liabilities, it might require
14 several separate litigations or a very large and complex
15 single litigation to pierce all the corporate veils back
16 to the parent company.

17 And so that is the structure that ENVY
18 is operating on -- under. Has operated under since
19 2002. When I get further down the chronology, we'll get
20 to Enexus, but it is just one more of those kind of
21 limited liability corporations that is being inserted
22 between Vermont and the assets of the parent company.
23 And that has been an ongoing concern. It's resulted in
24 several bills from your Committee on Finance.

25 Safe store is mentioned in the Public

1 Service order, the docket, but -- and it's mentioned, I
2 believe, in three places between the docket and the MOU
3 that Safe store could happen. That is a process whereby
4 a plant can be mothballed. It's been used to date when
5 there are two plants on the same site and one is shut
6 down and they've -- they've stored one of the,
7 mothballed it until -- because it's more economically
8 feasible to take down two at once. So one is mothballed
9 until the other.

10 But it is mentioned in a footnote that
11 federal law does allow up to 60 years, not to exceed 60
12 years in safe store.

13 Also in this document, Vermont Yankee
14 agrees that the Public Service Board does have the right
15 to relicense them and they forego any claim to
16 preemption on those grounds. That's 2002.

17 We go onto 2005 and, at that point,
18 they -- we were approaching safe store. If Entergy was
19 going to upgrade, it had to be able to store nuclear
20 fuel, spent nuclear fuel. The water bath that it was
21 stored in was full. It had to be able to store onsite.

22 2005, the Finance Committee heard that
23 the, I believe, the Appropriations Committee in the
24 budget was being asked to add an amendment to a 1979
25 agreement that had been reached between Vermont Yankee,

1 owned by the utilities. And what it said was -- the law
2 said that any storage of nuclear waste in Vermont had to
3 receive permission of the plaintiffs or the legislature.
4 In '79, there was an exemption to Vermont Yankee given.
5 These three little words which were -- I believe it was
6 heirs and assigns, something similar, would have been
7 added to that 1979 bill. That would have allowed
8 Entergy not to have to get permission to do nuclear
9 storage onsite. And the Finance Committee got word of
10 that and got word, I believe, to the Appropriations
11 Committee and those words were not added. But it was
12 concerning at that time.

13 Also in 2005, Vermont Yankee was --

14

15 End Track 29

16 Begin Track 30

17

18 -- notified that it has exceeded its (inaudible)
19 radiation limits by the Health Department. That Vermont
20 Yankee continued a discussion and in 2006 -- 2007, the
21 Health Department changed the way that it measured
22 radiation. It was specified in the law how radiation
23 was to be measured at the fence line. The Department of
24 Health changed those without going through the
25 administrative rules process. That change allowed

1 Vermont Yankee to -- to continue and not to exceed the
2 limits. That was rectified this past year when
3 administrative rules did hold a hearing and we did go
4 back to the original way of measuring radiation at the
5 -- at the line. And the difference was between how much
6 radiation hits your skin and how much radiation actually
7 gets inside and hits your vital organs. We're back to
8 how much hits your skin.

9 But in the meantime, the fence -- the
10 fence line -- Vermont Yankee has acquired additional
11 land and the fence line has been moved back, so we are
12 where we were in 2005.

13 2006, Act 74 allows dry cask storage
14 onsite. And in 2006, Act 160 prevents the Public
15 Service Board from issuing a certificate of public good
16 until the legislature acts in the affirmative. That's
17 why we're here today. This is filling out the
18 requirements of Act 160.

19 In 2007, an uprate was approved by the
20 Public Service Board. This allowed Vermont Yankee to go
21 from being a 530 to a 630 megawatt-producing plant. It
22 was a 20 percent upgrade. And that went forward.

23 In 2008 is when things -- the Finance
24 Committee really started to -- to take a closer look at
25 what was going on and that's when the Enexus proposal

1 began to be talked about. And what this proposal would
2 do is, right now, through a series of holding companies,
3 Entergy Corporation is the owner of Vermont Yankee. The
4 -- the profits from the purchase power unit flow to the
5 mother company and then what's needed come back. In
6 Enexus -- the proposal for Enexus would be Entergy is
7 going to sell its six, all in the same age range,
8 nuclear power plants. Now, these -- Entergy owns a lot
9 of regulated utilities. These are not -- these nuclear
10 plants are not regulated utilities. They are merchant
11 plants. They sell to the market. They are not owned by
12 a utility. They are not generating. They are a
13 merchant plant. They sell to the market at market rate.

14 The Enexus proposal will sell those --
15 they will be sold to Enexus. They will be a holding
16 company. You can see the drawings in the middle. That
17 operating and holding company will have money for
18 decommissioning and money for maintenance. But it's
19 been an ongoing concern. The money there might be
20 enough for one corporation, but it won't -- you know, if
21 you've got six aging plants, I think any of us that are
22 beyond the age of 35 know that the older you get, the
23 more expensive your physical becomes every year just to
24 find out you're healthy because there's more tests you
25 need and more just little procedures that -- that need

1 to be done. Nuclear plants are like that and this one
2 is operating at 20 percent above its originally designed
3 capacity. So it's -- it's a 65 year old out there
4 running a marathon and that increases some chance of
5 breakdown and reliability.

6 The Enexus will pay Entergy Nuclear 4
7 to 4.2 billion for these six plants. The plants, they
8 will then -- they will borrow that money to pay Entergy
9 by using the plants and their power contracts as
10 collateral. So this will be a very highly leveraged
11 company. It will have a lot of debt. And if you read
12 the things from The Security Exchange Commission, it's a
13 very high risk that any major breakdown in one or more
14 of these plants, an ability to -- to function, it's --
15 it's high-risk.

16 The concern of the Finance Committee
17 is, given this high -- this situation, what happens if
18 Enexus goes --

19

20 End Track 30

21 Begin Track 31

22

23 -- bankrupt? What happens if more than one plant needs
24 to be decommissioned at one time? Where is the money
25 coming from? And we've asked, through a series of

1 bills, S.373 in 2008, which said -- we asked for
2 financial guarantee. A letter of credit. But a
3 guarantee that when Vermont Yankee gets -- it comes time
4 to close it, and that may, if we extend the license, be
5 2012, but the oldest reactor in operation right now is
6 47 years. So it might only be seven or eight years when
7 that plant is not able to function anymore. We don't
8 know. But when it comes down, we've asked for a
9 guarantee that the money would be there from the parent
10 company, as it is originally in that sale, to
11 decommission it in a timely fashion. And I think we've
12 said up to 20 years. But our concern is we really don't
13 want this attractive nuisance mothballed, sitting on the
14 shores of the Connecticut River for 60 years. After 60
15 years, who knows what corporations will be around? We
16 have been told, "Just wait." That if you wait long
17 enough, the -- the value of the trust fund, which is
18 sitting in the stock market, earning -- last year it
19 lost, but it's -- it's growing. That at some point out
20 there, they'll -- they'll cross. That may be so. The
21 one thing we've learned is that, if you can predict the
22 power markets and costs -- if you remember in 2002, half
23 the document was dealt with what happens to the excess
24 money in the decommissioning fund if this thing gets
25 decommissioned and -- and closes down before 2022? It

1 was thought, what, 10 years ago, that there was more
2 than adequate funding in that decommissioning fund.
3 Since we've been looking at it for the last four years,
4 there's been a deficit in that fund. So, and all of
5 these calculations have been done before any calculation
6 for what the impact of the tritium leak will be on the
7 cleanup costs. We don't know that yet.

8 That bill, S.373, was vetoed by the
9 Governor and did not go into effect.

10 In 2008, we set up Act 189 which set
11 up the criteria for the comprehensive vertical audit and
12 set up the public oversight panel. This has been the
13 group that has been watching. Entergy was doing an
14 assessment and this was kind of our group that kind of
15 kept an eye for the legislature on -- on that whole
16 process, trying to determine the -- the reliability of
17 that plant. It's ability -- does it have the physical
18 stamina or what will be needed to give it the stamina to
19 continue in operation for the 20 years that's being
20 asked. Or should we really be saying maybe it doesn't
21 have -- you know -- don't do that.

22 The public oversight panel did bring
23 back a list. They found that the plant could probably
24 continue reliably if 80 thing were done. To date, we
25 know that four, maybe five of them have been done. But

1 there is a significant list of things that must be done.

2 In 2009, House Bill 436, passed out of
3 both bodies. It requires that the adequacy of the
4 decommissioning fund be determined before a nuclear
5 power plant could be sold to any other business. That
6 was also vetoed.

7 In 2009 and 10, we've had the tritium
8 leaks. Our concern with that, again, is the cost of
9 decommissioning and also the concern that either ENVY
10 did not know or did not tell us that there were
11 underground pipes. Either way, it's concerning for us
12 that they didn't know or they didn't tell us, but it --
13 it definitely sets a tone for where we are.

14 So that's a very abbreviated
15 chronology as to what's gone on.

16 I'm going to go through the issues as
17 we see them today and our concerns. The first issue is
18 the jobs and the economy. ENVY has 600, plus or minus,
19 employees. Their average wage is something near
20 \$140,000 a year. They're very good jobs. Any change in
21 the status of ENVY will have an impact on the economy.
22 We know that. However, we also know that this is not an
23 ordinary plant. This plant is not going to shut down --

24

25 End Track 31

1 Begin Track 32

2

3 -- tomorrow and 600 people are going to be out of jobs.
4 Only 200 -- slightly over 200 of those jobs are Vermont
5 residences. The rest are New Hampshire, Massachusetts,
6 surrounding states. But we do know that this plant, as
7 it closes, will be a five-to-ten year process. That
8 they will, it's estimated, need 400 people to -- to
9 close the plant down. They will not necessarily be all
10 the same jobs that there are today. We may, in fact,
11 create some new jobs to fill needs in that plant.

12 We do know that nuclear workers are in
13 high demand and that, by their own testimony, ENVY has
14 had trouble maintaining a full workforce because, as
15 this relicensing got closer, trained personnel are going
16 to greener pastures. So the trained personnel there are
17 not really going to have a problem finding other work.
18 It won't be in Vermont. That is concerning. But we do
19 know that we will have time to work out the property tax
20 settlements. We will have time. There's the
21 possibility another kind of generator, a steam generator
22 could be put into that plant once it's been cleaned.
23 There are other possibilities out there and it isn't an
24 all-or-nothing, here today, gone tomorrow. It's a --
25 it's a phase-out process.

1 And the experience at Maine Yankee,
2 which was closed, is that the town, Wiscasset, I
3 believe, has rebounded and is doing just fine. It did
4 -- they have a county tax system and it did result in
5 some tax shifts in that county, but the -- the plant and
6 the region have survived.

7 As -- as we went through this, what we
8 got back to were the two reasons that this plant -- this
9 sale to Entergy was authorized. The favorable purchase
10 power agreement and the decommissioning fund. And at
11 this time, those questions are still unanswered. We
12 have been asking for the last four years, will Entergy
13 Louisiana stand behind the understanding that was had at
14 the time of sale, that if, at decommissioning or for
15 major maintenance there is not enough money available,
16 that their resources will come into play and they will
17 back up ENVY. Remember, all the profits have been going
18 to Entergy Louisiana. They don't have a bank account
19 here in Vermont. And we've asked that and that's an
20 answer that I think you could get with a yes or no. We
21 have not gotten a clear answer. We've been told about
22 the lines will cross but, of course, it's to our
23 advantage to shut -- you know, to decommission as soon
24 as possible.

25 We have not -- we've had difficulty

1 getting representatives from Entergy to come talk to us.
2 When they've come to talk to us, they've had very
3 limited focus. They can talk about engineering but not
4 anything legal or financial. They can talk about power
5 planning, but not Enexus. They've -- they've come with
6 a very limited focus as to what they can talk about.
7 And we have yet to get an answer to the question will,
8 you know, if that decommissioning fund is not adequate,
9 will Entergy and its corporate resources stand behind it
10 and will it be -- and what kind of a timely fashion.
11 We've been very clear that we think that 60 years is
12 unacceptable. Twenty, maybe at an outside. But we have
13 not been able to get it. And these are not really
14 difficult questions.

15 The other one is the favorable
16 purchase power agreement. Now, I understand that
17 yesterday while I was putting my two sides together,
18 there was a gift proposed for Vermont. But we've been
19 -- the utilities have been negotiating for I think two
20 years to reach a purchase power agreement. This is not
21 something that the legislature negotiates. They have
22 failed to reach agreement and Entergy has made, and I
23 guess it's Enexus, at this point, even though the offer
24 is coming from Enexus, even though the sale to Enexus
25 has not been approved either here or in New York at this

1 date. So they have made known their purchase power
2 agreement. And they are offering us, where we had 280
3 megawatts, they are offering us 115. That's about a
4 third. And we were getting it at 4.2 cents a kilowatt
5 hour. They are offering it at 6.1 cents a kilowatt
6 hour. 6.1 cents is roughly the market rate --

7

8 End Track 32

9 Begin Track 33

10

11 -- for energy right now. We can go to the market and we
12 can buy electricity for 6.1 cents a kilowatt hour. So no
13 matter what you do, depending on the mix of your
14 utility, if we accept that -- the offer, or if we go to
15 the market, your electric rates are going to go up seven
16 percent, no matter what we do. There is -- we are -- we
17 are not -- the option to continue under our present
18 favorable arrangement has not been offered. So that --
19 that's there.

20

21 I had -- oh, yes. In return for -- in
22 this purchase power agreement, there is an inflator. So
23 this bill will go up based on some conglomerate
24 indicators, not the price of power. It will inflate
25 every March. As you go out into the future, given the
vagaries of the power market, and as we learned by Hydro

1 Quebec, that fixed price may or may not be a good deal.
2 We're talking a 20-year deal here. And if you can
3 predict power futures -- power market for 20 years, I
4 suggest you get into pork belly futures, because they
5 are about as -- as predictable. So we don't know. And
6 Entergy has asked for the utilities to give up their
7 revenue sharing. At the time of sale, I missed that, at
8 the time of sale, there is a very complex agreement. I
9 don't know that anyone understands exactly how it would
10 work. But if the strike price for energy hits six --
11 goes over 6.1, then there is some revenue sharing
12 mechanisms with the utilities. The utilities tell us
13 this is their insurance policy. This tells them that,
14 if the price of fuel skyrockets, as it did after Katrina
15 and, you know, there always could be another oil embargo
16 or somebody could blow up some oil fields or gas lines,
17 if the price goes up, they have the ability to purchase
18 at that ceiling, somewhere around -- and they feel
19 that's very important to their security. Entergy has
20 asked, in return for this market agreement, that they --
21 they do that.

22 And that is our concern. We are
23 concerned that we have not gotten the favorable purchase
24 power agreement we had. We are concerned that with
25 Enexus, Entergy seems to be trying to insinuate an even

1 larger roadblock between Vermont Yankee and its other
2 nuclear corporations and the -- the resources, the
3 assets of the parent company. And we're concerned that
4 the amount in that fund in that fund, in that holding
5 company is not enough to cover the cost of all the
6 liabilities that those plants could engender.

7 We are concerned that the company has
8 been unwilling to talk to us. That does not help in a
9 process. And we are concerned for the jobs and for the
10 people in Vermont and for the impact.

11 For this reason, it's a balancing act,
12 and we bring it to you for your consideration. Thank
13 you.

14 PRESIDENT: Thank you, Senator. Are
15 you ready for the question? The Chair would like to
16 recognize the Senator from Chittenden District.

17 SENATOR FROM CHITTENDEN: Thank you,
18 Mr. President. I'd like to speak on behalf of the
19 testimony that the Senate of Natural Resources and
20 Energy Committee has taken related to Vermont Yankee
21 overall and the reliability of energy and energy
22 planning. If I might speak to the bill, Mr. President.

23 PRESIDENT: Please do, Senator.

24 SENATOR FROM CHITTENDEN: Thank you,
25 Mr. President. While this bill is not coming from our

1 committee, nor has our committee taken any action on the
2 bill, I do wish to offer testimony related to the issues
3 that are before us. And I will concur with the Senator
4 from Washington that the Senate of Natural Resources has
5 taken significant testimony on Vermont Yankee and, as
6 well, on energy planning over the past four years and,
7 in addition, over the past eight years.

8 With respect to this particular bill,
9 we have heard many folks, in an attempt to understand
10 our role and jurisdictional responsibilities with
11 respect to continued operation of the plant. We in
12 Natural Resources and Energy heard from many over the
13 past few years to offer information relating to the
14 performance reliability --

15

16 End Track 33

17 Begin Track 34

18

19 -- within the plant itself for the plant itself.

20 And finally, we have gathered
21 information relating to planning for and access to
22 electricity in the state.

23 Mr. President, as we have taken
24 testimony and we've heard that, and through the work of
25 the independent public oversight panel that developed

1 the vertical audit of the -- of the plant, we have heard
2 a variety of issues related to operational -- operations
3 and management at the plant. And I know that those are
4 -- are issues that are familiar to many people. You
5 know, the issue of the missing cool rods for a period of
6 time, transformer fire or fire in the transformer,
7 cracks in the steam dryer, cooling tower collapse, crane
8 misoperation, workers being evacuated due to radiation
9 -- radiation, inadequate testing of spray nozzles.

10 UNIDENTIFIED MALE SPEAKER: Mr. -- Mr.
11 President --

12 SENATOR FROM CHITTENDEN: And most
13 recently.

14 PRESIDENT: Excuse me, Senator. The
15 Chair would like --

16 SENATOR FROM CHITTENDEN: -- I --

17 UNIDENTIFIED MALE SPEAKER: Just a
18 point of order, Mr. President. Just would like to
19 clarify for the body that we here in the Senate,
20 unfortunately, we are limited to certain areas of debate
21 and anything dealing with the safety issue is not within
22 our purview and, therefore, I would ask that any debate
23 be limited strictly to those issues under our purview
24 and safety is not one of them and I just want to make
25 sure that the body is aware of that.

1 PRESIDENT: Thank you, Senator. Point
2 well taken. Senate from Chittenden.

3 SENATOR FROM CHITTENDEN: Thank you,
4 Mr. President. And most recently we've heard of -- of
5 leaking pipes at the plant which have caused for
6 radiologic liquid, effluent.

7 Now, as the Senator from Windsor has
8 indicated, many of these areas are not within our
9 jurisdiction. Nevertheless, they are indicative of
10 operational problems and concerns at the plant and
11 indicative of -- of an aging -- an aging nuclear plant.
12 It has been operating for 37 years of its 40 year life.
13 And as I indicated, the vertical audit has identified 80
14 of these areas, issues that should be resolved before
15 any continued operation of the plant. Current, to date,
16 four of those have been addressed by the plant, as
17 indicated to us by our independent oversight committee.

18 And the question is, Mr. President,
19 with all of the -- the problems that we're seeing at the
20 plant and the operational issues, should the plant shut
21 down, as the Senator from Washington has indicated, that
22 will, indeed, affect the reliability of the operations
23 of the plant and the reliable electric output from the
24 plant.

25 Mr. President, we also have heard from

1 Department of Public Service with regard to energy
2 availability and planning and we were very reassured
3 that the lights in this state will not go out should the
4 plant not continue operation after 2012. That there are
5 plans in place, both at the -- at the Department level
6 and through the utilities of the state, including our
7 distribution and transmission utilities, to -- to insure
8 that Vermonters have access to electric power. And we
9 -- we can talk further about that, Mr. President, should
10 that need arise.

11 I -- I don't want to -- I don't have a
12 long report and I will say that we have, in our
13 testimony, have identified operational problems which
14 suggest concerns about reliability of the plant and we
15 -- we know that New England markets have grown and that
16 there are options out there that we did not have in the
17 -- in the past.

18 Finally, Mr. President, over a period
19 of time, the Senate of Natural Resources and Energy, as
20 well as other folks in this building and outside of the
21 building, have worked to insure that our plans are in
22 place for electric generation going forward and that we
23 have identified those sources in our -- in our energy
24 plan that will insure and reassure Vermonters that these
25 lights stay on. Thank you, Mr. President.

1 I'd like to yield to the --

2

3 End Track 34

4 Begin Track 35

5

6 -- Senator from Windham, Senator Shumlin, to complete
7 our report.

8 PRESIDENT: Thank you, Senator.
9 Senator from Windham District.

10 SENATOR FROM WINDHAM: Thank you, Mr.
11 President. And I want to thank the committees that have
12 worked so hard on this bill and on the question that Act
13 160 asked us to answer. Is it in Vermont's best
14 interests to operate Vermont Yankee beyond the scheduled
15 closing date of 2012? I know the Finance Committee has
16 taken four years of testimony on this issue. I know
17 that the Natural Resources Committee has taken over four
18 years of testimony on this issue. And I just want to
19 thank them for their hard and diligent and thoughtful
20 work.

21 I want to address two questions to
22 complete this report that the chairs have asked me to
23 address. First is process. And the second is to
24 clarify some of the information that has been raised
25 over the last few days about process.

1 It's been alleged that, by some, that
2 today we're making a rush to judgment. That somehow I
3 have changed my mind. That I have somehow been
4 inconsistent about my position on whether or not the
5 legislature should vote. It just want to clarify for
6 the record what I have said and why I have said it and
7 why we're voting today.

8 Listen, my job as President Pro Tem of
9 the Senate is to exercise a bipartisan, open, deliberate
10 process, and that is what the Speaker and I committed to
11 when we started talking about this vote today several
12 years ago when he was elected Speaker and I was elected
13 President Pro Tem to the Senate.

14 It's been said by some that it has
15 been a secret that we're going to vote today. I have
16 before me, if I might, Mr. President, the December 30th,
17 2009, Burlington Free Press. Seventy-five cents.
18 Public information. And what it says is, "Shumlin,
19 Lawmakers Could Vote on Yankee." And the article
20 continues with the following quote, if I may, Mr.
21 President:

22 "I'm optimistic that we can deal
23 with this issue one way or the other."
24 I also said on Vermont Public Television quite recently
25 the following, and it's a quote:

1 "We intend to exercise our
2 legislative responsibility to determine
3 whether or not it's in the best
4 interests of Vermonters to relicense
5 Vermont Yankee for an additional 20
6 years. Right now, we're taking
7 testimony. We will move forward"

8 That's exactly what we've done.

9 Ten days ago, my diligent and careful
10 and qualified Chair of Finance came to me and said,
11 "Peter, we don't have anymore people to hear from about
12 the question that Act 160 has asked us to answer. It's
13 time to vote." So, I called in the other Chair of the
14 committee of jurisdiction, Senator Lyons from Chittenden
15 County, and asked her where her committee was. And even
16 though they didn't have jurisdiction of the bill, they
17 were looking at some of the Natural Resources issues and
18 had been for four years. And she said, "Peter, we
19 cannot take additional testimony. We've been taking it
20 for four years. It's time to vote." That's my job.
21 That's when I announced that we would be voting.

22 I just want to point out that, in
23 terms of consistency, until a very, very short time ago,
24 we would also be exercising the stated wishes by voting
25 of the Governor of the State of Vermont, of Entergy

1 Louisiana and of the Department. Governor Douglas said
2 in his State of the State Address on January 7, 2010,
3 that's this year, this legislature should vote to let
4 the Public Service Board decide the case for
5 relicensing. That's what Act 160 asks us to do.

6 He said on January 30th, 2009, in a
7 Rutland Herald article, "Peter Shumlin ought to have a
8 vote. They should have had a vote last year." That was
9 the Governor.

10 He also said in a Dave Graham article
11 by the Associated Press on February 27, 2009, "I think
12 the legislature certainly has time --

13

14 End Track 35

15 Begin CD 2 of 3

16 Begin Track 1

17

18 -- to take this up," last year, he was talking about.

19 "The great certain -- the greater certainty we have in
20 our electric supply, the better." We agree about that.

21 "It would be good for the process going forward to let
22 the Public Service Board begin its part of the review
23 and have some conclusions sooner rather than later."

24 And the list goes on.

25

So in terms of process, while I

1 understand that we often make the process argument in
2 this building when things are controversial, when votes
3 are tough, when it takes courage. I have been
4 consistent and I believe I have done my job to the best
5 of my abilities.

6 The second point that's been raised
7 and I want to clarify is that somewhere there are
8 studies out there that we have been waiting for which
9 will give us answers that we do not currently have that
10 we should wait longer for. And I want to address the
11 two studies that have been referred to.

12 The first is the Vermont Clean Energy
13 Partnership put out a release over the last several days
14 that implies that we, the Joint Fiscal Committee is
15 waiting for a report that we, the Joint Fiscal Committee
16 or the legislature somehow commissioned and that we're
17 waiting for that information. That's not correct. The
18 report that's being referred to was commissioned by our
19 two Vermont utilities; Central Vermont Public Service
20 and Green Mountain Power. The legislature's involvement
21 in those -- in that report was this simple. They wishes
22 to employ for this study two entities that the
23 legislature also employs. One was Tom Kavet, our
24 economist; and the other was Synapse, whom we have hired
25 to guide us in our deliberations. They both didn't wish

1 to take this job from these two companies without our
2 permission from the Joint Fiscal Committee because they
3 wanted to insure that we didn't feel that they're
4 working for another entity in their job -- in their
5 effort to do business in Vermont, which we encourage,
6 but would somehow be seen as a conflict of interest. We
7 approved them working on those reports. That is the
8 single and only involvement, as I understand it, of the
9 legislature in those reports. We are not waiting for
10 them.

11 We did commission other reports, all
12 of which we now have back and all of which have been
13 considered by your Finance Committee and your Natural
14 Resources Committee as they've deliberated. Let me talk
15 about those reports.

16 The oversight panel delivered us the
17 audit that was required by Act 160 on March 17th of
18 2009. What that audit report stated was that there were
19 80 areas that Entergy Louisiana had to address in terms
20 of both maintenance and operational challenges in order
21 for them to be reliable to operate for another 20 years.

22 I then appointed, along with the
23 Speaker, Arnie Gunderson, who was also my appointee to
24 the oversight panel, to oversee the implementation of
25 those 80 recommendations to insure that Entergy

1 End Track 1

2 Begin Track 2

3

4 -- but the point is, the audit came back fair enough
5 that, when the tritium leaks were released, the Speaker
6 and I asked our auditors to go back in and examine the
7 question of how did it impact the audit that we had
8 before us since we had been told or lead to believe that
9 there were no underground pipes that our auditor, Arnie
10 Gunderson, insisted did exist and had been told under
11 oath didn't exist. So we asked them to go back in.
12 They are doing that right now.

13 I have talked to both Peter Bradford,
14 to Arnie Gunderson and to NSA, the company that Entergy
15 Louisiana and the Department contracts with, to go in
16 and do a vertical slice of those underground pipes.
17 Now, he -- unfortunately, they didn't get the report
18 back to us on February 16, as we requested. They simply
19 can't do it that fast. There's doubt about whether
20 we'll get that part of the report back in time for us to
21 adjourn. We just don't know. But what we do know is
22 this, we will not get information from it, in my
23 judgment, that we don't already have. What NSA is
24 likely to say is, "You have underground pipes at the
25 plant." If you didn't know that yet, we don't need an

1 outside company to explain that one to us anymore.
2 Those plant -- those pipes -- some of them are in rough
3 shape. They've been there for 40 years. But that
4 that's not significantly different than the other plants
5 that are aging and scheduled to be retired also across
6 the country. That's the only report back that it would
7 be nice to have, but from which we can move forward and
8 deliberate -- in a deliberate and thoughtful process
9 without that particular piece. We have the audit
10 report. That's what matters.

11 The last point I want to make is that
12 all of a sudden it's being stated that somehow this is a
13 meaningless vote. That this vote today that you are
14 about to make doesn't mean anything. And that argument
15 is being put forth because it's being said all of a
16 sudden that -- two things. One, that future legislators
17 can vote differently. And, two, that all 180 members of
18 the legislature somehow haven't had an opportunity to
19 weigh in together. Listen folks, let's go after real
20 issues. To suggest that any bill that we pass in this
21 chamber can't be changed by future legislators is to
22 misunderstand our responsibility in the greatest
23 democracy in the world. We have elections every two
24 years and during those elections new people are hired to
25 do our jobs and they can change judgments about

1 everything that we do here. So anyone that's surprised
2 that future legislators won't be bound by our work on
3 any subject might want to take another look at the
4 democratic process. Of course, future legislators can
5 undo what we do, but what we're doing is extraordinarily
6 significant. It's complying with Act 160, the law that
7 requires us to act. And in terms of 180 of us making
8 the decision together, if the bill passes the Senate
9 like any bill and advances to the House, the House will
10 then weigh in, if they choose to act on the bill. So
11 that's the way the process works.

12 So finally, I just want to wrap up by
13 saying this. I'm urging you today to vote to retire
14 Vermont Yankee on schedule in 2012. I am taking --
15 making that judgment, urging you to make a similar
16 judgment. Based upon five simple facts that both the
17 Chair of Finance and the Chair of Natural Resources have
18 eluded to and discussed.

19 The first is the price that was
20 offered to us by Enexus. And I received that offer with
21 Speaker Smith last December in a meeting in my office.
22 This is how that price was explained to me by Entergy
23 Louisiana. If we were to relicense this plant beyond
24 the scheduled closing date of 2012, we will pay Entergy
25 Louisiana 50 percent more for any power that we purchase

1 from them than we are paying today. So when you hear
2 folks say, "How can we not do this? They've giving us
3 cheap power." Wrong. They're giving us power at 50
4 percent more than we're paying today; from four cents to
5 6.1 cents. You can do the math.

6 Second, it has an inflation kicker in
7 it which is going to drive that price up --

8

9 End Track 2

10 Begin Track 3

11

12 -- up, in all likelihood. And third and most important
13 and lest understood by Vermonters right now, the offer
14 from Enexus is for 11 percent of our power at that
15 price, not the current 33 percent that we're purchasing.
16 Now, that happens to coincide with the goals of Green
17 Mountain Power and Central Vermont who have said that
18 they want to wean Vermont from our dependence on an
19 aging nuclear reactor down in Vernon. So the third
20 point that's really important to understand is that they
21 made clear that, in no uncertain terms, this price offer
22 is from Enexus not from Entergy.

23 And when I asked Jay Thayer, "Listen,
24 what if the Public Service Board were not to approve the
25 spin-off to Enexus and the New York Board were to

1 approve it?" He said, "We would shut the plant down."
2 This offer is from Enexus and it is only from Enexus and
3 this is not an offer from Entergy Louisiana. We are not
4 making an offer because we're getting out of the nuclear
5 power business of running our six older plants. So
6 that's the first point.

7 Now, there's a reason why Green
8 Mountain Power and Central Vermont haven't come to a
9 power purchase agreement with Enexus, Entergy Louisiana.
10 The reason is, they've concluded that the price is no
11 good. That Vermonters would have to pay too much. I
12 agree with that assessment.

13 Second; cleanup. It would cost one
14 billion dollars, roughly, today, to return the plant to
15 a green field as was promised by Entergy Louisiana when
16 they bought the plant from CV and Green Mountain Power.
17 Today, there's roughly 400 million dollars in that fund.
18 It's 600 million dollars short. Despite the good
19 judgment of two bipartisan bills passed by this
20 legislature to require Entergy to guarantee the fund if
21 they're going to spin it off to another company, to
22 guarantee that Vermonters don't get stuck with that
23 bill. We know that the Governor has vetoed both of
24 those bills. There is still roughly 400 million dollars
25 in that fund. It's still 600 million dollars short.

1 And that's before one considers the additional cost
2 created by the tritium leak of decommissioning. That
3 has not been factored into the billion dollars because
4 we still haven't gotten to the bottom of it.

5 Now, what you have to know is that a
6 similar plant in Illinois which had tritium leaks had
7 their decommissioning costs doubled as a result of that
8 leak. So the second reason is cleanup.

9 The third is the spin-off. Listen,
10 our focus in this legislative session has been on job
11 creation. It's been a bipartisan focus. We're going to
12 pass out an economic jobs creation bill next week on
13 this floor that our economic development committee has
14 worked hard on. That's our focus, is job creation. The
15 reason that we are in this recession right now is
16 because crafty people on Wall Street who want to make a
17 lot of money have put together schemes that have made
18 them a lot of money and the bill for that is being
19 picked up by the hard-working people of the State of
20 Vermont and people on Main Street. Lehman Brothers,
21 AIG, Fairpoint Communications, we all know the
22 companies. But trust me, those proposals look like
23 amateur hour compared to this Enexus spin-off proposal
24 that we've been consistently fighting against. What
25 they're going to do is very simple, if they get their

1 way. Go to a closing on Wall Street. Put 3.5 billion
2 dollars of borrowed money in their pockets and Entergy
3 Louisiana and the stockholders walk away. Hey, I'm a
4 capitalist. If they can pull this one off, more power
5 to them. It's legal. It's not moral, but it's legal.
6 Then they need money to run a company. So they have to
7 borrow and issue 1.2 billion dollars of junk rated B-
8 bonds to run the thing.

9 So what are we left with in the State
10 of Vermont? Six aging nuclear power plants, one of
11 which seems to be leaking. 4.7 billion dollars worth of
12 debt. That's what we have. Not a good idea. I repeat,
13 Entergy Louisiana made very clear to both the Speaker
14 and myself, this offer and future business is from
15 Enexus, not from Entergy Louisiana.

16 Fourth, reliability. Listen, I don't
17 think that needs any further discussion than has been
18 offered by our two chairs, except to say that, if you
19 don't think that leaking tritium and I believe cobalt
20 into the groundwater and the Connecticut River and --

21
22 End Track 3

23 Begin Track 4

24
25 -- environment of the State of Vermont that every single

1 Vermonter cherishes and holds dear and we all agree is
2 the bedrock and the foundation of the values that we
3 hold as Vermonters, I don't know what else you can have
4 as an indicator that reliability is a problem.

5 Finally, trust. Listen, I know that
6 Entergy Louisiana had a press conference this morning
7 and they issued a report that said that lawyers that
8 they had hired from Washington had filed information
9 with the Attorney General's Office concluding that they
10 had not mislead our regulators or our legislators in
11 describing the underground pipes that didn't exist. As
12 the Senator from Washington, Senator Cummings said, "If
13 you want to believe that, you should and you could." I
14 learned in business, 23 -- when I was 23 years old,
15 don't do business with someone that you can't trust
16 because they'll eat your lunch every single time. If
17 you can trust them, if they were, in fact, telling the
18 truth, that they didn't know that there were underground
19 pipes under the plant, then the obvious question is,
20 well, what's worse? A company that won't tell you the
21 truth or a company that's operating an aging nuclear
22 power plant on the banks of the Connecticut River and
23 doesn't know that they have pipes with radioactive water
24 running through them that are leaking and they don't
25 know because they didn't know the pipes existed.

1 Neither is very comforting.

2 The conclusion is this. I'm urging
3 this Senate to show the courage to future generations of
4 Vermonters that the time has come for us to move onto
5 our next generation of energy in this state. I'm asking
6 us to have the courage to stand up for job creation, for
7 the extraordinary economic opportunities that are going
8 to come to this nation as we say goodbye to our old and
9 tired nuclear power plants, and this one in Vernon, and
10 move on to renewables, move on to green technology, move
11 onto the power of the 21st Century. We can create more
12 jobs in Vermont as we get off our addiction to oil and
13 move to a (inaudible) any other economic force, in my
14 judgment, that's hit this country and this planet in a
15 long time. The only question is will we be smart
16 enough? Will we be courage enough? Will we be
17 strategic enough to insure that we get a piece of that
18 economic activity for Vermont? I urge you to vote to do
19 that, to start that process, to get it underway today.
20 Thank you, Mr. President.

21 PRESIDENT: Thank you, Senator. The
22 Chair would like to recognize the Senator from
23 Washington District.

24 SENATOR FROM WASHINGTON: Thank you,
25 Mr. President. I wonder if you might be able to --

1 there was a point of order brought before and I'm
2 somewhat unclear as to what that really meant. We're
3 talking about reliability and we're talking about safety
4 and I wonder if you could maybe describe to us what
5 we're supposed to base our decision on or what we're
6 supposed to talk about and what we're not supposed to
7 talk about in the context of safety and reliability. Is
8 that something you can do?

9 PRESIDENT: The Chair is going to
10 declare a brief recess and confer with the Secretary of
11 the Senate to discuss the point of order.

12 (WHEREUPON, a break in the proceedings occurred.)

13

14 End Track 4

15 Begin Track 5

16

17 PRESIDENT: I call the Senate to
18 order. Thank you for your patience. The presiding --
19 the Senator President has conferred with the Secretary
20 of the Senate and the Secretary of the Senate, in
21 response to a parliamentary inquiry, it's always fun, as
22 the presiding officer, to rely on our source document,
23 the Vermont Constitution. And the Secretary of the
24 Senate has referred me, the presiding officer, to
25 Article 14. "Immunity," -- I'm going to read it

1 verbatim. And the section under Article 14 is:

2 "Immunity for words spoken in a
3 legislative debate. The freedom of
4 deliberation, speech and debate in the
5 legislature is so essential to the
6 rights of the people that it cannot be
7 the foundation for any accusation or
8 prosecution, action, complaint or any
9 other court or place whatsoever."

10 And the question that I think the Senator was talking
11 about was safety, reliability. What is the
12 responsibility of this body? I would say, quoting the
13 Article 14 of the Constitution is it's our
14 responsibility to talk about these things, irregardless
15 of the fact that the Public Service Board is the, and
16 the Nuclear Regulatory Commission has a responsibility
17 for safety. The Senator from Windsor brought that into
18 the -- into the conversation earlier in the debate. But
19 hopefully, Article 14 is helpful to the Senator from
20 Washington in regards to your question about the
21 responsibility in the context of this debate.

22 SENATOR FROM WASHINGTON: Thank you,
23 Mr. President.

24 PRESIDENT: The Chair would like to
25 recognize the Senator from Windsor District.

1 SENATOR FROM WINDSOR: Thank you, Mr.
2 President. I'm going to ask for -- for a recess, in an
3 overabundance of caution, because, again, we have to
4 understand that our jurisdiction here is based under Act
5 160 and while the Chair, I do respect your
6 interpretation of the fact that what we say in here in
7 active debate is, in fact, protected, I believe that
8 this might bring up a legal jurisdictional matter. And
9 whether or not we are, as a body, are making our
10 decision here whether to relicense, based on an issue
11 that we don't have jurisdiction over, and I can assure
12 you that I know that we've discussed it in our caucus
13 and the fact that our decisions are not based on issues
14 that are under the purview of the NRC or other bodies.
15 But I want to make sure that, if -- I would like to
16 confer with counsel and make a determination whether we
17 need to go further with any other procedural issues as
18 far as to protect the record here and to show that this
19 discussion today has nothing to do with issues that are
20 not within our purview and everything to do with issues
21 regarding reliability of the plant and whether the plant
22 should be relicensed for the next --

23 PRESIDENT: How much time would you
24 like, Senator, for your recess?

25 SENATOR FROM WINDSOR: I would like

1 for the fall of the gavel.

2 PRESIDENT: Chair would like to --

3 SENATOR FROM WINDSOR: It's to the
4 fall of the gavel, Mr. President.

5 PRESIDENT: Chair is going to declare
6 a recess to the fall of the gavel.

7 (WHEREUPON, a break in the proceedings occurred.)

8

9 End Track 5

10 Begin Track 6

11

12 PRESIDENT: I'd like to call the
13 Senate to order. The pending question is shall the bill
14 be read a third time. Are you ready for that question?
15 The Chair would like to recognize the Senator from
16 Washington District.

17 SENATOR FROM WASHINGTON: Mr.
18 President, may I interrogated the reporter of the bill
19 from Finance?

20 PRESIDENT: The reporter is
21 interrogated.

22 SENATOR FROM WASHINGTON: Thank you.
23 You -- you had mentioned before about the Maine Yankee
24 shutdown --

25 PRESIDENT: Excuse me, Senator. I'd

1 like to ask the Sergeant of Arms, I know it's difficult,
2 but out of respect for the dialogue, bring them in or
3 bring them out and keep it quiet out in front so we can
4 -- we can listen to the conversation. I appreciate
5 everyone's patience in -- in according with following
6 our rules. We appreciate that. The Senator from
7 Washington District.

8 SENATOR FROM WASHINGTON: Thank you,
9 Mr. President. My question has to do with the Maine
10 Yankee and the shutdown of Maine Yankee and you
11 mentioned that there was some economic problems --

12 UNIDENTIFIED MALE SPEAKER: Mr.
13 President, I still can't hear.

14 PRESIDENT: Yes. Sure. I'm going to
15 declare a short recess out of --

16 (WHEREUPON, a break in the proceedings occurred.)

17

18 End Track 6

19 Begin Track 7

20

21 PRESIDENT: Excuse me, Senator. The
22 Senator from Washington District.

23 SENATOR FROM WASHINGTON DISTRICT:
24 Thank you, Mr. President. My question is going to be
25 about the Maine Yankee shutdown. And I understand from

1 your report that you had mentioned that there was some
2 economic impacts concerning the shutdown of Maine Yankee
3 and I wondered if you had them in, or maybe you could
4 describe to us what those impacts were and how they were
5 able to get out of that situation.

6 SENATOR FROM WASHINGTON: Thank you,
7 Mr. President. I'm going through my pile of documents
8 and I will find my third reading of the Maine Yankee
9 study.

10 There was, and I'm going from memory
11 -- there were definitely some tax increases. They
12 worked on a county tax and so some member -- you know,
13 some towns, there were -- as the tax base went away
14 in -- was it Wiscasset, other towns in the county had --
15 had to pick up a greater share. But it was spread out
16 over the county. Again, it didn't happen all at once.
17 You know, there was no major -- didn't go into a
18 depressed state. They were able to phase the jobs in
19 and out.

20 The one difference that there is
21 between Maine Yankee and Vermont Yankee is that Maine
22 Yankee was still owned by the Maine utilities and they
23 worked to help, you know, phase in and phase things out.
24 They actually had trouble keeping workers there and they
25 had to do what is know as the golden handcuffs. They

1 made them an offer they couldn't refuse to keep them,
2 very lucrative offer to keep workers at the plant. But
3 the -- you know, that's one of the things we don't know.
4 Will Entergy, a non in-state corporation be as helpful
5 and as cooperative in phasing out at the Maine utilities
6 were and we don't know that. That's one of the
7 unanswered questions and that question goes to whenever
8 this plant shuts down. Because this plant will shut
9 down, either in, You know, 20 years or it will shut down
10 when something bad happens and it's not feasible to fix
11 it and, you know, it -- whenever it's a business
12 decision to stop it. And so we don't -- that's one of
13 the things we don't know, what roll with ENVY or, at
14 that point, since -- once it stops producing power, ENVY
15 has nothing but the decommissioning fund. It has no
16 assets. Will it -- what role will they play in -- in
17 helping the surrounding communities?

18 SENATOR FROM WASHINGTON: Was there
19 about the same amount of employees at Maine Yankee as at
20 VY.

21 SENATOR FROM WASHINGTON: Somebody's
22 nice. They sent me the study. And this was done by Ray
23 Shadis. It had -- no. It's smaller. And I'm looking
24 for the number of employees. It was smaller. I think
25 they had about 400 employees and at first they laid off

1 two-thirds of them and then they had to hire -- I
2 believe they had 420 and they had to hire most of them
3 back. I'm looking for a number.

4 SENATOR FROM WASHINGTON: Did Ray come
5 in?

6 SENATOR FROM WASHINGTON: No. This
7 was brought to us very late in the process. We did have
8 presentations on Vermont Yankee and their shutdown
9 process early on from our nuclear engineer who was
10 actually part of that shutdown process.

11 SENATOR FROM WASHINGTON: Do we
12 have -- are you saying, though, that we do not have any
13 control over how they shut the plant down in terms of
14 employees?

15 SENATOR FROM WASHINGTON: The NRC has
16 control over the decommissioning process. The estimates
17 are that they will need about two-thirds of -- of --
18 two-thirds of the number of employees that they have,
19 about 400. But they will not all be the same employees.
20 They -- and we have no breakdown. That's another thing
21 that is not under our jurisdiction.

22 SENATOR FROM WASHINGTON: Did you --
23 400 employees versus the 600 and something employees
24 that are there. Have you considered, and I am not sure
25 about the economic area of Wiscasset or wherever it is,

1 and what other industries they rely on, but I was
2 curious about the affect that it's going to have on the
3 local economy, obviously, and I wondered if you'd -- if
4 you'd taken information on that?

5 SENATOR FROM WASHINGTON: We have. We
6 -- we heard the IBW, the electric worker's union has
7 done a study and Vermont Yankee itself has done a study.
8 And, you know, it depends --

9

10 End Track 7

11 Begin Track 8

12

13 -- on if -- if you put it in, you know, a model and you
14 say we're going to get rid of 600 jobs and, you know,
15 you shoot that out into the economy, you get some pretty
16 dire results. What Vermont Yankee did is that, what Ray
17 Shadis did, is he said, "You know, you put that in and
18 it looks pretty bad, but let's see what happened when
19 you had an actual plant shut down." And what they found
20 out first is that nuclear plants don't buy a lot of
21 goods and services from the surrounding general store
22 because you don't sell nuclear fuel at Allen Lumber, you
23 know? And you don't -- once they're up and running,
24 they -- they don't buy a whole lot. Their employees do.
25 But again, it's a phased-out process and so you don't

1 have -- I mean, we've had major plants shut in this
2 state and when they shut, they shut. They go away.
3 We're left with paying the unemployment. This is going
4 to be a phased-out process. And there was in Maine a
5 phase-out worked out with the local town because Vernon
6 does have a very nice tax deal. I think, if we've got a
7 gold town left, it's Vernon. They can phase it out.

8 They can choose to put another
9 industry in there. They have the opportunity to do that
10 and there's been talk about other kinds of power plants
11 going in.

12 You know, there's -- there's -- it's a
13 whole process that can go on. And, no, that is one of
14 our concerns. There will be an economic impact.
15 Probably not -- you know, it won't be an all at once.
16 But they're definitely -- you're shutting down a plant.
17 There will be some ripples out through the economy, but
18 it will take some time. And there will be some families
19 that will lose work and there will be some families that
20 will move to go with the jobs.

21 SENATOR FROM WASHINGTON: Did Ray
22 happen to say in his report how much they had to raise
23 the taxes? How much --

24 SENATOR FROM WASHINGTON: It's there
25 and I can find that by third reading.

1 SENATOR FROM WASHINGTON: The IBE --
2 both the IBEW study does show that and I will find that
3 study in the pile. And what I said was I was quoting
4 the testimony of Ray Shadis in the Maine study and what
5 they found was that -- that the plant itself did not
6 make huge purchases, as some other industries do. That
7 was a quote from the Maine study. I never said that
8 there would not be an economic impact or that it, for
9 some companies, would not be a serious impact. We know
10 that there will be. That's one of the reasons this is
11 without recommendation.

12 We do know that that impact will --
13 will be phased in and that part of that impact will also
14 depend on whether or not the -- whether -- what kind of
15 accommodations; if Entergy Louisiana will work out a
16 phase-out with the local communities. And a lot of that
17 is, again, beyond our control and is in the control of
18 Entergy and ENVY and Enexus and whoever they are when we
19 come to decommissioning. And this will happen. Whether
20 it may happen in 2012, if we relicense. It will happen
21 in, what, 2032. The odds looking at the record of aging
22 nuclear plants is that it will happen somewhere in
23 between because there is no record of a plan operating
24 beyond --

25

1 End Track 10

2 Begin Track 11

3

4 -- 47 years. And so this will happen. We can be
5 prepared to a greater or lesser extent, but this plant
6 is not going to operate in perpetuity. I mean it, by
7 its very nature. So, we did look at it. It will
8 change.

9 What was I just given? Okay. Yes --
10 104 annually. So we do know, yeah, that there are 1,288
11 jobs created by Vermont Yankee both at the plant and at
12 the local community. We know that there will be 400 and
13 that there will be 400 workers there and that money
14 will, again, be being spent in the community. It won't
15 be an all-or-nothing. There may be a company, I am not
16 sure what shrink wrap does at Vermont Yankee. I don't
17 know if they're shrink wrapping the reactor or the pipes
18 or if they're -- you know, it's something done in the
19 secretarial office. So, I don't know how that business
20 will be impacted and I don't know that we could.

21 And again, the job of this legislative
22 body is to decide whether or not we want the Public
23 Service Board to go forward with its certificate of
24 public good process in which they will be weighing all
25 these -- this information in much greater detail. And

1 so this is to pass this decision onto the Public Service
2 Board.

3 SENATOR FROM RUTLAND: I want to make
4 it clear, Mr. President, that nothing I should say
5 should be construed to think that I'm supporting the
6 current Entergy operation at Vermont Yankee. With that
7 being said, I just want to -- to ask, if we heard in the
8 Finance Committee any testimonies from utility
9 executives about the possible impacts on negotiations
10 and whether or not the proceedings here today could
11 possibly prove injurious to their successful negotiation
12 of affordable future contracts.

13 SENATOR FROM WASHINGTON: We have had
14 representatives in from all of the major utilities
15 within the past week, week and a half, talking about
16 future power supply, their plans, their power planning.
17 None of them said to us that this would be injurious to
18 their future planning. And we let anyone say anything
19 they feel like in finance.

20 SENATOR FROM RUTLAND: So the
21 testimony on the record was that the utilities had no
22 position one way or the other?

23 SENATOR FROM WASHINGTON: The
24 utilities did not bring it up as this bill moved. It
25 may have been discussed several years ago when they

1 began their negotiations, but the negotiations have now
2 broken down. The last and best offer has been made
3 public by ENVY or Enexus.

4 SENATOR FROM RUTLAND: Well, Mr.
5 President, I don't know if the last and best offer has
6 been made public because they keep having press
7 conferences and changing the rules of the game.

8 SENATOR FROM WASHINGTON: Well, yes.

9 SENATOR FROM RUTLAND: I guess it
10 shouldn't be any surprise to me, but I am not sure what
11 the current proposal is at this point.

12 SENATOR FROM WASHINGTON: Well, the
13 current proposal, as we know it, is the one they
14 announced in November-December, which is rather than 4.2
15 cents a kilowatt hour, we're going to pay 6.1, which is
16 the market rate, at least it was three days ago. That
17 there will be an inflator on that and it will be
18 adjusted annually, upward. That we -- the utilities are
19 being asked to give up their revenue sharing ability
20 which Entergy agreed to at the time of the sale and
21 which the utilities seem to feel is the most important
22 thing out of this whole thing because they say it's
23 their insurance policy. And they're only going to give
24 us a third of the power that they've giving us now.
25 That's the thing they have made public.

1 Now, as of yesterday, I guess they
2 said, well, for three years, they'd give Economic
3 Development or something a four cent -- I guess it's 25
4 kilowatts, and I figured that out as .04 percent of
5 their output for a couple years at four cents. But your
6 regular ratepayers, according to what has been offered,
7 are going to pay seven percent more. It depends on the
8 mix in your particular utility, they're going to pay
9 more whether you buy it off-the-market or you buy it
10 from Entergy because they're not offering us a good
11 deal.

12 SENATOR FROM RUTLAND: Mr. President,
13 several times today a statement has been made that over
14 the last four years. The way I understand this process
15 is that it doesn't matter what was said three or four
16 years ago. That each session is different. That each
17 committee should do their due diligence.

18
19 End Track 11

20 Begin Track 12

21

22

23 Could the Reporter tell me if she is
24 convinced and can assure the rest of her colleagues in
25 the Senate that the full economic impacts of the closing

1 of the plant have been studied? That we have properly
2 planned so that the Vermont economy is properly prepared
3 and that Vermont ratepayers will not be injured through
4 higher electric rates.

5 SENATOR FROM WASHINGTON: Mr.
6 President, I don't think that the electric rates are
7 within the control of the Finance Committee. Those
8 would be negotiated. We only know what has been said to
9 us and said to the entire world publicly, which is what
10 Entergy or Enexus has offered. They don't seem to be
11 backing down on that process, even though it's been very
12 clear that it -- it's of a concern. And part of the,
13 you know, our concern with relicensing.

14 I don't know that -- I mean, we know
15 there will be an economic impact. Do we know exactly
16 which companies are going to get hurt, when, where and
17 how much? No. We don't, because we don't know how this
18 is going to roll out. We don't know what roll Entergy
19 is going to play in it. We do know that the State is
20 prepared, as it is for any other closing, to go in. We
21 have -- the Department of Labor has a regular SWAT team
22 that goes in with job retraining and job searches and
23 helps people find jobs. We do know that we have --
24 we've been told -- a very generous unemployment
25 insurance program. Some of us may disagree with that,

1 but we do have an insurance program that will help
2 folks.

3 We do know that a large number will be
4 able to find work in other nuclear plants, especially if
5 Washington continues with its plans to open new plants.
6 There will be workers in hot demand. And we do know
7 that there will be some -- you know, that there will be
8 some shake up. Do we know what exactly that will be?
9 No. Will we know any better if we study it for six more
10 months? And -- and even if we know exactly what plants
11 -- you know, if we knew what companies might be
12 impacted, are we going to have any money to help them?
13 No. We don't have any money this year. So there isn't
14 a whole lot we can do.

15 We could vote to continue this plant
16 forever and the cost of the tritium cleanup comes in and
17 the -- whoever owns the plant at that point, Entergy,
18 Enexus, ENVY, may decide that it is not in their
19 business interest to make that investment and shut the
20 plant in three weeks. This wouldn't be the first time
21 that a nuclear plant had been shut down for repairs
22 never to reopen. Maine Yankee was shut down by its
23 owners because they decided the cost of fixing, I
24 believe it was an underground cable that had been found
25 as a part of their relicensing audit, was too expensive

1 to justify repair. So there's -- there's all kinds of
2 unknowns out there and I don't think that we're going to
3 know -- we may have more numbers. I don't know that
4 we're going to be able to do anymore about it, if we
5 wait another six weeks or six months or six years.

6 SENATOR FROM RUTLAND: In this current
7 session, Mr. President, the last two years, how much
8 time has been spent by the Finance Committee analyzing
9 the economic impact on Vermont?

10 SENATOR FROM WASHINGTON: We have not
11 done extensive analysis of the economic impact. I think
12 we know what it could be as a worst-case. We know what
13 it could -- what it played out to be in Maine. I think
14 that's the reason that we have brought this out without
15 recommendation. This is -- these are the things that
16 each senator needs to balance in their own right.

17 SENATOR FROM RUTLAND: Thank you, Mr.
18 President. I hope that each -- no more questions. I
19 hope that each one of the Senators will balance
20 everything in their own right, but I hope we do so after
21 we hear all the facts and that we've done our due
22 diligence, done our homework. And for that reason, I
23 will support the motion by the member from Washington.

24 PRESIDENT: Thank you, Senator. The
25 Senator from Washington District.

1 SENATOR FROM WASHINGTON: Mr.
2 President, I just think that speaks volume about why
3 this bill needs to go to Economic Development. We, as a
4 body, all of us know that we're committed to our -- our
5 morning committees and our afternoon committees and we
6 rely on each other for information to make sure that we
7 make the best choices possible as we move forward. It's
8 almost impossible for us to do all the work on every
9 bill and every issue that comes before us. So with 30
10 Senators, split up between numerous committees, we need
11 the backup, we need them to do their work in their
12 committees so that we can make decisions based on their
13 recommendations. And I --

14

15 End Track 12

16 Begin Track 13

17

18 -- appreciate all the work that the Finance Committee
19 and Natural Resources has done on this bill. But these
20 questions remain unanswered and I -- I can't -- I -- I
21 don't think any one of us should have to go, as
22 individuals, to seek out the responses to the questions
23 we have. That's why we have committees.

24

25

So I would ask that we send this to
Economic Development.

1 PRESIDENT: The Senator from Orange
2 District.

3 SENATOR FROM ORANGE: Mr. President,
4 we had a list of folks that were interested in power
5 prices. The Finance Committee has worked on this for
6 many years. It has taken testimony this year. It has
7 taken testimony in November and December with other
8 committees and we have invited in the people who
9 understand the power process; the utilities and VELCO
10 whose job it is to deliver power throughout the State of
11 Vermont in a timely and reliable fashion.

12 The utilities are bargaining with
13 Yankee, whichever Yankee shows up in the particular day,
14 whether it's Brattleboro, New Orleans or Enexus. And
15 they have come in and told us, Mr. President, that we
16 can buy power from the plant from 6.1 cents. The
17 utilities have come in and told us they have already
18 purchased power for 2012, 2013 and 2014 at about 6.1
19 cents. They're already buying it. One of the reasons
20 they're already buying it is because they don't expect
21 to buy from Vermont Yankee what Vermont Yankee used to
22 sell us. The utilities plan to only want half as much
23 as what Vermont Yankee used to and currently sells us.
24 And the utilities are paying the same price, 6.1 cents
25 for power in 2012, as Vermont Yankee is offering us

1 today.

2 PRESIDENT: Senator, not to be rude.
3 I do want to make sure that the question that we're
4 talking about is whether S.189 should be referred to the
5 Committee. So, with respect, I just wanted to make
6 sure --

7 SENATOR FROM ORANGE: Appreciate that,
8 Mr. President. The member from Franklin said it was an
9 important economic question. What was the cost of power
10 going to be, Mr. President? And Mr. President, it's
11 going to be 6.1 cents in 2012 with Vermont Yankee and
12 it's going to be 6.1 cents without Vermont Yankee and
13 that's what the utilities have told us.

14 Now, you might be able to get power
15 for 6.1 cents from either place, but the next question,
16 Mr. President, from an economic point of view is, is it
17 deliverable? Will it show up? And VELCO, whose job it
18 is to do the planning, who the Department depends on and
19 refers us to, who this legislature listens to, has come
20 in and told us that reliable power is available. The
21 poles and wires exist to deliver it. If Vermont Yankee
22 shuts down and McNeil in Burlington shuts down at the
23 same time, and a truck runs into the lines south into
24 Massachusetts and the line snaps and the line going east
25 through New Hampshire breaks because of a thunderstorm,

1 if all those happen, the industries will get their power
2 as scheduled. The reliability is there. That's their
3 job. They're in charge of insuring that the source is
4 reliable and the economic needs of this state will be
5 met. That's the system we have now and with Vermont
6 Yankee down, power shows up.

7 Mr. President, if the lights aren't
8 going to go out and we have 10 times as much power being
9 offered to us today than what Vermont Yankee produces,
10 that's good economic development.

11 Mr. President, if you can get power
12 from Yankee for the same price as you can get it on the
13 market for 2012, 2013, 2014, that's good news. Why
14 would you stay open? Why would you recommend that
15 Vermont Yankee stays in operation? Well, I guess you'd
16 have to balance the economic costs of having a workforce
17 phased down over a period of years, five years.
18 Gradually get smaller. Against the economic benefits of
19 renewables that would grow during those years. Mr.
20 President, you have worked in the past to encourage
21 renewables for the very reason, economic reasons; that
22 they keep money in the state.

23 We have 40 years of waste that's going
24 to be at Vermont Yankee in 2012 and that has an economic
25 cost --

1 End Track 13

2 Begin Track 14

3

4 -- Mr. President. If we make a decision to take on 20
5 more years of waste, that's going to have a greater
6 economic cost, Mr. President. And it will drain either
7 the ratepayer who may get stuck with the bill to store
8 that for goodness knows how long, or it may drain the
9 federal government and those of us who pay taxes to the
10 federal government to store that for goodness-knows how
11 much longer. And it may be the subject of prolonged
12 litigation that will drain both sides before we get an
13 answer.

14 So if this economy is being offered
15 power today at the same rate from Vermont Yankee as from
16 the other sources who are eager in competing with each
17 other to sell it to us at approximately the same price,
18 what would be the prudent thing to do, Mr. President?

19 I would recommend that we say no.
20 That we can get power at the same price, thank you very
21 much. Lights aren't going to go out. There's plenty
22 available. There's a six percent surplus right now in
23 power in New England. And if Vermont Yankee or anyone
24 else wants to sit down and make deals with the power
25 company about better rates in the future, let them do

1 that. There's no reason, Mr. President, to continue to
2 -- there's no financial reason, and our committee has
3 taken testimony on from the planners -- to continue to
4 take power from this plant. It doesn't exist.

5 PRESIDENT: Thank you, Senator.
6 Senator from Windham District.

7 SENATOR FROM WINDHAM: Thank you, Mr.
8 President. May I inquire of the Chair of Finance?

9 PRESIDENT: Only if she wants to be,
10 Senator. Senator from Washington District.

11 SENATOR FROM WASHINGTON: Thank you,
12 Mr. President.

13 SENATOR FROM WINDHAM: My question is
14 we heard a list of the people who are in the economic
15 development field that we've all received letters from
16 in our mailboxes, and suggested that they should be
17 allowed to come in and testify to you. My question is,
18 did they request admission before your committee to
19 testify and did you turn them down?

20 SENATOR FROM WASHINGTON: No. They
21 did not request and we did not turn anyone down.

22 SENATOR FROM WINDHAM: Thank you, Mr.
23 President. As a chair of another committee, I can tell
24 you that oftentimes I've heard the argument, "We haven't
25 heard from every single person that has something to say

1 (WHEREUPON, a break in the proceedings occurred.)

2

3 End Track 8

4 Begin Track 9

5

6 PRESIDENT: Call the Senate to order.

7 The question is shall the bill be read a third time?

8 It's been asked that the vote be conducted by a call of

9 the roll. The Chair would like to recognize the Senator

10 from Caledonia District.

11 SENATOR FROM CALEDONIA: Thank you,

12 Mr. President. My understanding is we're back to the

13 original bill. May I interrogate the Reporter of the

14 bill?

15 PRESIDENT: The Reporter is

16 interrogated.

17 SENATOR FROM CALEDONIA: Mr.

18 President, could you tell me what the affect of the no

19 vote would be on Entergy today?

20 SENATOR FROM WASHINGTON: Okay. The

21 affect of the -- of a no vote on Entergy today would be

22 that the legislature has failed to vote in the

23 affirmative and, therefore, the Public Service Board

24 cannot go through with its certificate of public good

25 process. Immediately today, there would be no affect.

1 It wouldn't shut them down today. It would merely state
2 that this legislature does not support relicensing in
3 2012.

4 SENATOR FROM CALEDONIA: And could you
5 also just clarify for me the affect on Entergy today if
6 -- or Vermont Yankee -- if no bill at all had been
7 introduced today?

8 SENATOR FROM WASHINGTON: If no bill
9 at all had been introduced, then we would still be
10 waiting for the -- the legislature to indicate where it
11 was going and they -- they wouldn't -- the Public
12 Service Board would not be able to go forward with the
13 certificate of public good process.

14 SENATOR FROM CALEDONIA: And it's my
15 understanding that our Committees of Jurisdiction and
16 Natural Resources, Economic Development, Health and
17 Welfare or Finance or any other, could continue to hear
18 testimony in the next two years?

19 SENATOR FROM WASHINGTON: Yes.

20 SENATOR FROM CALEDONIA: Thank you.
21 Mr. President, I do want to thank my colleagues from the
22 Rutland District and others today. This has been an
23 interesting discussion for the last few hours. I think
24 there's a lot of good ideas that are still left to be
25 vetted and I hope that today's vote, in my opinion, is

1 still a prelude to an ongoing process of review and that
2 we are going to, some of us or all of us, whoever may be
3 here in the next two years, will have an opportunity to
4 continue work on that and I do believe that there is
5 more to hear on the subject and I know today's vote will
6 not stop that. So I encourage us to continue to work on
7 that.

8 On a point of personal privilege, I'd
9 like to add a huge thank you to the Pages who are
10 working in the legislature today because just in the
11 past three hours I've been delivered I think about -- I
12 haven't counted them all -- but about I'd say 50 or 60
13 pink slips. I hope that's not an omen of things to
14 come, necessarily, but I do thank -- I thank them -- I
15 thank them for putting on 20 or 30 miles on their shoes
16 today delivering those. Thank you, Mr. President.

17 PRESIDENT: Thank you, Senator. The
18 Senator from Chittenden District.

19 SENATOR FROM CHITTENDEN: Thank you,
20 Mr. President. If I could, I'd just like to add onto
21 that, that I am extremely grateful to all the members of
22 the public who have sent these messages to us, both
23 today and in the past several weeks. Both pro and con.
24 And I do appreciate that participation in the process.
25 Thank you.

1 PRESIDENT: Thank you, Senator. Are
2 you ready for the question? It's been asked that the
3 vote be conducted by a call of the roll. The Chair
4 would like to recognize the Senator from Chittenden
5 District.

6 SENATOR FROM CHITTENDEN: I won't take
7 long, Mr. President. I wanted to support Vermont
8 Yankee. As a business person, I imagined a very low
9 transition -- transition from nuclear to renewable
10 energies with less risk to our businesses and jobs. But
11 that did not happen because we did not have a believable
12 partner. Vermont Yankee has shown itself unable or
13 unwilling to manage an aging plant with inadequate
14 investment, maintenance and funds for decommissioning.
15 At some point, you have to shoot the engineer which
16 means you make the decision as best you can with the
17 information that you have. I'm not shooting any of you,
18 Senator. And it occurs to me that something very
19 important is happening. There's a paradigm shift.
20 There's a paradigm shift from judging business
21 activities from stockholder from value which means what
22 a profit for the stockholder of Vermont Yankee to
23 stakeholder value and, as one of the people in our
24 committee testified today, that's people --

25

1 End Track 9

2 Begin Track 10

3

4 -- and profit. How do these decisions affect our
5 community, our environment and a profitable structure.

6 There's no doubt there's going to be immediately
7 economic loss with jobs, taxes. I reviewed the Maine
8 study in our break and all the categories are there, but
9 we will deal with that. There's a risk in voting no and
10 there's a risk in voting yes. By voting no today, which
11 I will do, the urgencies to support innovation and
12 entrepreneurship has accelerated. Only focused laser
13 commitment to higher ed and workforce training,
14 streamlined regulation and tax policy that encourages
15 and incensed capital investment will serve Vermonters
16 with the opportunity for next generation energy jobs and
17 security as well as the much needed tax increases that
18 we will need going forward for our state. Thank you,
19 Mr. President.

20 PRESIDENT: The Senator from
21 Chittenden District.

22 SENATOR FROM CHITTENDEN: Thank you,
23 Mr. President. I don't have quite the impassioned
24 speech that my colleague from Chittenden has, but I do
25 thank her for her comments.

1 I -- I would like to say for the
2 record, Mr. President, that Natural Resources and
3 Energy, all committees in this body and the committees
4 in the other body have worked assiduously for the past
5 eight years in putting into place energy plans which I
6 have brought with me, that the Department of Public
7 Service has provided us with electric plans,
8 comprehensive energy plans. Our utilities have put
9 together integrated resource plans. And we, Mr.
10 President, are influencing that planning by the
11 legislation that we passed in this building. Today is
12 critical to that future. We will see a paradigm shift.

13 Mr. President, we will see economic
14 development as a result of the decisions that we make
15 here today and I encourage all of us to think carefully.

16 We had -- we had testimony in our
17 committee that was very clear that there are folks out
18 there who are very passionately for nuclear power.
19 We had testimony from a gentleman who is an engineer who
20 worked in the nuclear power industry and he is critical
21 -- very critical and very dismayed with the operation
22 that we are seeing at Vermont Yankee.

23 For that reason, Mr. President, I will
24 vote against this bill this afternoon and I do encourage
25 us all to become engaged in our energy future, our

1 renewable energy future and, as we go forward in this
2 chamber, that we work together in that endeavor. Thank
3 you, Mr. President.

4 PRESIDENT: Thank you, Senator. The
5 Senator from Franklin District.

6 SENATOR FROM FRANKLIN: Thank you, Mr.
7 President. I'm one of that minority of Senators who has
8 supported the various amendments that have been brought
9 to the floor today to slow this process down. But when
10 it comes to the end of the line in the discussions
11 today, as I look at the bill before us, I, too, will be
12 voting no on the principal bill. And I'll be voting no
13 on the basis of what I know today, not what I believe I
14 should know to make a fully informed decision. What I
15 know today is that we have a business partner in Entergy
16 that, if it's board of directors and its management were
17 thoroughly infiltrated by anti-nuclear activists, I do
18 not believe they could have done a better job in
19 destroying their own case. The dissembling, the
20 prevarication, the lack of candor have been striking and
21 there's not enough time to be able to correct that
22 through management changes or through the kinds of
23 things that we had hoped, with time, we could resolve.

24 The second reason that really propels
25 my vote of no are the financial arrangements that will

1 leave us with a debt-ridden, highly-leveraged company
2 that does not make economic sense. And when I listen to
3 the explanations that have been presented to us, I'm not
4 at all comfortable with the explanations make good
5 business or economic sense. And so for that reason, I'm
6 voting based on what I know today, but with a deep
7 unease that there are many things I wish I could know to
8 make an informed vote that I don't. Thank you, Mr.
9 President.

10 PRESIDENT: Thank you, Senator. The
11 Senator from Washington -- I'm sorry, Lamoille District.

12 SENATOR FROM LAMOILLE: Thank you, Mr.
13 President. I think the issue of Vermont Yankee has been
14 one of the most frustrating issues that I have had to
15 deal with in 18 years in this building.

16
17 End Track 10

18 Begin Track 11

19
20 And I took and have taken great comfort in the fact that
21 the approach that we have taken was to hire some outside
22 folks to give us non-biased information. And then as
23 partners, we had Entergy, who I agree with the Senator
24 from Franklin, I think it was Napoleon who said, "When
25 your enemy is successfully defeating themselves, you

1 shouldn't interrupt them."

2 What's -- and -- and my -- my
3 frustration over this issue continues. First, there
4 isn't -- of the 180 folks in this building, and
5 yourself, Mr. President, there isn't anybody who doesn't
6 realize what a significant decision this is. And having
7 been here for a while, when you make significant
8 decisions, it's always easy to -- what's going to
9 happen? What's going to happen? And you know what,
10 there aren't any guarantees. We can read the report
11 from Maine, but that was a lot of years ago in what
12 happens. We know there's going to be some economic
13 downturn, but you just don't know how creative
14 Vermonters are and how we're going to respond. We don't
15 know what the price of electricity is going to be. And
16 for all those reasons, it's really, really scary.

17 For me -- and then coming to the
18 floor, and in this conversation, to add to my
19 frustration, and I know others in the -- in the body, we
20 have to be really, really careful about what we talk
21 about because what we have jurisdiction over is
22 reliability. So we don't have jurisdiction over
23 anything else. And the concern is that, for instance we
24 say things about other things, then our wonderful
25 partner is going to sue us and that will be used against

1 us. So we just kind of compound, I know it's not just
2 my frustration.

3 So, I want to start with, I understand
4 we do not have jurisdiction over what I'm about to talk
5 about. And for me, the past couple of weeks, the
6 scariest testimony has been coming from our Natural
7 Resources Committee. And it appears to be, between all
8 the bodies involved and the regulatory committee, that
9 nobody has control over this. I am told that it seems
10 pretty evident to me that there is an illegal discharge
11 into the waters of the State of Vermont. My -- and but
12 it's nuclear so we don't have any control over it, which
13 truly makes me wild.

14 Up in my part of the world we had a
15 ski area that had a leak in a fuel oil tank. They got a
16 staggering fine for fuel oil leak. But we're told this
17 isn't our jurisdiction and we can't do anything. I
18 don't understand why we aren't asking our Agency of
19 Natural Resources to impose a significant fine on them
20 right now because everybody agrees there's a leak, but
21 it's -- we don't have any jurisdiction. Okay. We don't
22 have any jurisdiction.

23 They've proven that they're terrible.
24 Everybody agrees with that.

25 And one last thing. We've been told

1 and it's been said it takes a lot of courage -- this
2 vote today is taking a lot of courage. I was here for
3 Act 60 and how we fundamentally changed how we funded
4 education, Mr. President. There, for a lot of people,
5 that was an act of courage. Civil unions, that was an
6 act of courage. Mr. President, to vote no today is a
7 no-brainer.

8 PRESIDENT: Are you ready for the
9 question? The Senator from Chittenden District.

10 SENATOR FROM CHITTENDEN: Thank you,
11 Mr. President. I think we know what the vote is going
12 to be, so I will be mercifully brief. But I believe
13 what we're doing today is a very powerful statement to
14 Entergy and to the citizens of the State of Vermont that
15 it's really time to move forward. The reliability
16 issues have been talked about. There's nothing more to
17 say. The financial issues I think have been talked
18 about. There's very little that is left to be said. By
19 my concern, really, is about the future of the State of
20 Vermont and what kind of energy future we're going to
21 have and I believe today is a beginning and it's a
22 beginning of a better energy future for all of the
23 citizens of the State of Vermont because it's going to
24 be based on conservation and efficiency and renewable
25 energy, solar, wind, biomass, what have you, and that's

1 going to be good for our economy. That's going to be
2 good because it's going to create jobs in the State of
3 Vermont. And we've been having this debate about
4 Vermont Yankee for years and years and years and, to me,
5 it's very exciting today for this -- for the elected
6 representatives of the people of the State of Vermont to
7 be making a very --

8

9 End Track 11

10 Begin Track 12

11

12 -- clear statement that it's time to move forward in a
13 different way that will allow us to not leave a legacy
14 of unknown costs to future generations, but a legacy of
15 a sane energy policy. Thank you, Mr. President.

16 PRESIDENT: Thank you, Senator. Are
17 you ready for the question? The Chair would like to
18 recognize the Senator from Windham.

19 SENATOR FROM WINDHAM DISTRICT: Mr.
20 President, I just want to wrap up the debate by thanking
21 the Senate for this extraordinary debate. This is a
22 great example of why Vermont has the best democracy in
23 the country. And I also want to thank the many people
24 who are not only in this building and, frankly, if we'd
25 known that so many were going to come, when we designed

1 this chamber, we would have made it bigger. So we want
2 to speak to the people down in Room 11 and 10 and folks
3 who are being brought in on VPR's live broadcast and the
4 rest.

5 Listen, this is -- whether this passes
6 or it fails, and I expect that we can all count on the
7 outcome, I don't want us to minimize how important this
8 vote is. There is a difference between us fumbling and
9 refusing to act on the law that requires us to vote and
10 voting. Those that say that this vote today isn't
11 extraordinarily important, in my view, those that feel
12 that this isn't going to pass the judgment on whether
13 this plant was designed to be close down in 2012 will be
14 closed down on schedule, those that think that this vote
15 won't make that difference, I believe they are incorrect
16 and let me tell you why. If this legislature chooses to
17 vote no and not allow the Public Service Board to issue
18 a certificate of public good, it is my judgment that,
19 even if Entergy Louisiana should sue us on a preemption
20 case, that they will fail. And I say that because, when
21 this bill, Act 160, passed the legislature when I wasn't
22 here, on a voice vote, I understand, in one or two of
23 the chambers, was supported by Republicans, Democrats,
24 Independents and Progressives, was signed by Governor
25 Douglas and supported by Entergy, Entergy Louisiana

1 also, at the same time, signed a memorandum of
2 understanding with the Public Service Board that stated
3 that they would live by Act 160, that they would not
4 challenge our jurisdiction in court. And in order for
5 them to win a case now, they have to argue to the judge
6 not only did we perhaps not exactly tell the truth about
7 the existence of underground pipes, but we also now want
8 to change what we promised in the MOU. I think it's a
9 very tough sale to any judge and any jury.

10 So vote carefully. Vote wisely. I
11 firmly believe that we embark today on a new energy
12 direction for Vermont, if we vote no. If we have the
13 wisdom and the courage to vote no and I urge all of you
14 to do so. Thank you, Mr. President.

15 PRESIDENT: Thank you, Senator? Are
16 you ready for the question? I'd like to ask the
17 Secretary --

18 UNIDENTIFIED MALE SPEAKER: Roll --
19 yes.

20 PRESIDENT: I'd like to ask the
21 Secretary to please call the roll at this time.

22 SECRETARY: Senator Ashe.

23 SENATOR ASHE: No.

24 SECRETARY: Senator Ashe votes no.
25 Senator Ayer.

Vermont S.289 of 2010

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A-1584

1 February 18, 2010

2 (Begin Recording.)

3 Senate Finance Disk #10-54/Track 1

4 UNIDENTIFIED FEMALE SPEAKER: Senate
5 Committee on Finance, Thursday February 18th, 2010.

6 End Track 1

7

8 Begin Track 2

9 ***

10 KENNETH THEOBALDS: Thank you. Good
11 afternoon, Madame Chair and members of the committee. My
12 name is Kenneth Theobalds. I'm vice president of
13 government relations for Entergy Corp. I'm responsible
14 for government relations in the northeast, in the states
15 of New York, Massachusetts and Vermont. It's my
16 pleasure to be here today. Thank you for the
17 invitation.

18 I just have a brief few remarks that
19 I'd like to run through and then I'm available for your
20 questions, if that's all right.

21 CHAIRMAN CUMMINGS: Yes. Fine.

22 KENNETH THEOBALDS: Okay. I want to
23 thank you all for the opportunity to speak with you
24 today. When it comes to an issue that is important for
25 Vermont's economic and environment future, I know you

1 want to get it right. Of course, there is much I could
2 say about the known benefits of Vermont Yankee's
3 operation. I could talk at length about the economic
4 impact that has accrued during this plant's history of
5 safe operations. I could provide year-after-year of
6 facts about the steady employment that Vermont Yankee
7 has provided, not only in good economic times, but in
8 several periods of economic peril, including the recent
9 recession.

10 I could simplify the near 1,300
11 Vermont Yankee-produced jobs in the state into stories
12 about individual workers and their families whose lives
13 will be affected by your decisions. You probably know
14 some of them personally and could add your own stories
15 to mine.

16 And you already know how much it means
17 to the environment quality of Vermont to have such a
18 significant percentage of its electrical demand met by a
19 plant that has practically no emissions and emits zero
20 greenhouse gases, especially at a time when the country
21 is trying to come to grips with how to address climate
22 change. I could illustrate these points at length, but
23 I won't, at least not today. Why? Because I believe
24 you already have the one thing that you need most, a
25 sound regulatory process already in place for deciding

1 the future of Vermont Yankee.

2 In addition to the rigorous work being
3 done by state and federal regulators, the legislature
4 has in motion its own activities to gather information
5 about the plant. That data-gathering process which the
6 legislature has said it needs to do the right thing is
7 far from complete. It's your right and duty to get the
8 full benefit of that process and to allow your own
9 experts to conduct a sensible, appropriate review of the
10 facts.

11 For example, the comprehensive
12 reliability assessment acquired by Act 189 was reopened
13 to conduct a review of the advanced off-gas system and a
14 review of the buried pipe program and Vermont Yankee.
15 Any vote now would take place without your knowledge of
16 those reviews.

17 As we speak, your Joint Fiscal
18 Committee experts are studying the affect of any Vermont
19 Yankee decision on electric rates and jobs.

20 You are also awaiting the results of
21 Entergy and other investigations into tritium in
22 groundwater at the plant, as well as progress on
23 negotiations for a power purchase agreement.

24 For something this important, you want
25 information and we agree with you. And it's clear that

1 a hasty vote would deprive you of information that you
2 need to make the right choice.

3 Of course, we are in favor of the
4 continued operation of Vermont Yankee beyond 2012 and
5 we're prepared to make the case for it. But make no
6 mistake about this, we are also firm believers in the
7 state and regulatory processes in place. We believe
8 those processes should be allowed to go forward without
9 premature legislative action that could have unintended
10 consequences.

11 We are not in favor of legislation
12 that would deny the Public Service Board its right to
13 decide when whether to issue a certificate of public
14 good. We are in favor of giving you time to get the
15 facts, wherever they lead, that will help you decide
16 whether or not the Public Service Board can go forward
17 and do their job.

18 On behalf of Entergy and the men and
19 women of Vermont Yankee, I thank you for your careful
20 consideration.

21 CHAIRMAN CUMMINGS: Thank you.
22 Senator (inaudible).

23 UNIDENTIFIED MALE SPEAKER: Yes. I
24 have two questions. One, does Entergy consider itself
25 responsible if there's any shortfall in the

1 decommissioning fund?

2 KENNETH THEOBALDS: Entergy -- the
3 owner-operator of that plant is ultimately responsible
4 for the full decommissioning of that plant and the
5 restoration of the site. That is our financial
6 responsibility, no one else's.

7 UNIDENTIFIED MALE SPEAKER: Okay. And
8 the other one, as much testimony as we've taken, I've
9 never understood the reason for Enexus.

10 KENNETH THEOBALDS: Well, even though
11 I'm not really here prepared to discuss that
12 conversation, I'll put it in the context of what I do
13 know and I'm prepared to say there's a lot that I don't
14 know. But the board of directors of the Entergy
15 Corporation made a determination that they felt it was
16 in the best interests of shareholders, board employees,
17 institutional investors, to separate our non-utility,
18 unregulated or merchant generation business in the
19 northeast and Midwest, that's New York, Vermont,
20 Massachusetts and Michigan, from the regulated utilities
21 in the southeast, that would be in Louisiana, Arkansas,
22 Mississippi and parts of Texas. That those two
23 businesses had reached a point where they needed to sort
24 of both go their own way. They have very different
25 requirements in terms of regulatory requirements, their

1 capital and financial commitments, and that, in essence,
2 both companies would prosper or both organizations would
3 prosper by allowing these businesses to continue to grow
4 and develop in their separate way.

5 As you know, there are significant
6 issues in these regulated utilities with regard to in
7 the south, obviously, there's a lot of storm risk.
8 We've had several, you know, top category hurricanes.
9 There's an obligation to serve in those southern
10 utilities that is not the same here in the merchant
11 generation business where we earn all the risk. We are
12 not a rate-regulated utility. We're not a monopoly.
13 We're not guaranteed any rate of return. So I think
14 that the Board and people a lot more qualified to speak
15 on it than I made a determination that it would be in
16 the best interests to allow those two businesses to
17 continue to grow and move forward separately.

18 UNIDENTIFIED MALE SPEAKER: I
19 understand that. But that still doesn't --

20 KENNETH THEOBALDS: That's -- that's
21 sort of a layman's decision or a layman's --

22 UNIDENTIFIED MALE SPEAKER: But it
23 still doesn't make -- make sense as to why.

24 ***

25 CHAIRMAN CUMMINGS: Commissioner

1 O'Brien. We'll continue with musical chairs here.

2 COMMISSIONER O'BRIEN: Sure. For the
3 record, my name is David O'Brien. I'm Commissioner of
4 the Vermont Department of Public Service and I am here
5 to speak about the committee bill related to the
6 continued operation of Vermont Yankee. My comments
7 actually will be I think fairly brief.

8 The Governor a few weeks ago had
9 called for, essentially, what he described as a time
10 out. His reasoning for that time out was based on the
11 things that have come to light, the very disappointing
12 discovery of the buried pipes on the site that didn't
13 coincide or did not coincide with the information we
14 were given during our audit, and a lot of unanswered
15 questions, not just about the audit that we're now
16 finishing and related to the physical nature of those --
17 that piping system and the procedures around it, but
18 sort of how did that sort of misinformation occur in the
19 first instance. And the Governor has, I think, spoken
20 to that at length.

21 Also, of course, the tritium leak on
22 the site and not knowing the -- the source of that at
23 the moment, the investigation is ongoing and I think
24 it's -- we're getting data everyday, thanks in large
25 part to the Health Department keeping people updated on

1 that, as well as whatever calls were going on with the
2 NRC and the -- the owner of the plant, Entergy. It's,
3 you know, while we're getting a lot of data on a day-to-
4 day basis, you know, we don't have anything definitive
5 yet and that -- that point is not there yet. We haven't
6 reached a point where we can say, "This is the source.
7 This I the corrective action. And this is the nature of
8 the contamination." To what degree is there
9 contamination on the site? Is there any sort of
10 indication of that contamination reaching the general
11 public and, therefore, affecting public health and
12 safety?

13 So there are, as I mentioned
14 specifically, Act 189, you may recall, was the
15 legislation that created the vertical audit that we
16 conducted and Mr. Theobalds eluded to that. And while
17 that audit, you know, found that the plant could
18 continue to operate reliably, including the role of the
19 public oversight panel, that work has been re -- brought
20 back and the team of investigators have gone back to the
21 site to finish this -- that part of the audit that we
22 simply didn't look at before because we didn't have an
23 indication that those buried pipes existed.

24 ***

25 So that's essentially how we view

1 the legislation. And I guess, if we had our druthers,
2 we'd say that this is something that needs to take a --
3 take a little bit different course. But, you know,
4 that's -- you know, we -- we have our own perspectives.

5 CHAIRMAN CUMMINGS: Commissioner, I
6 think that's part of what's concerning this committee.
7 We have been looking at these issues for at least four
8 years and we don't see to be any closer to getting an
9 answer to the questions, other than the recent tritium
10 leak, which is a new event, but the whole
11 decommissioning and who is responsible. Now, I heard
12 Mr. Theobalds say that Entergy was the owner-operator.
13 And he said the owner-operator. He didn't say Entergy.
14 And there's been that confusion. Is it Entergy or is it
15 ENVY, Entergy Vermont Yankee, which is an LLC that has,
16 to the best of my understanding, other than the physical
17 plant and the power contracts, no assets. And so when
18 it shuts down, it doesn't have any money to put
19 additional money into the cleanup.

20 I believe with your MOU, Entergy has
21 agreed to put 60 million dollars, but I was reading, I
22 think it was the original sale.

23 COMMISSIONER O'BRIEN: Um hum.

24 CHAIRMAN CUMMINGS: And that 60
25 million dollars was agreed to there. So I mean, in your

1 understanding, who is responsible? Is it ENVY or
2 Entergy or might it be Enexus?

3 COMMISSIONER O'BRIEN: Well, it isn't
4 Enexus now because Enexus, essentially --

5 CHAIRMAN CUMMINGS: Is -- is not.

6 COMMISSIONER O'BRIEN: -- doesn't
7 exist. But it's always been our understand that it's
8 ENVY that's responsible. And while that may not --
9 that's, I guess, not a comfort to some, to be clear
10 about that, I -- I think I -- it's only important in the
11 sense that, when you compare what Enexus means to the
12 state versus where we are today, it's been, I think,
13 sort of a false comparison to think of Entergy as a
14 larger corporation being responsible. And I don't know
15 if I've characterized it this way in this committee
16 before, but I viewed it as -- from a -- from a licensee
17 responsibility to the NRC and as a responsibility to the
18 State by virtue of the sale of the plant, it is the
19 Vermont subsidiary that's responsible. And you could
20 look at it that Entergy may not be contractually
21 responsible for the decommissioning fund, but you could
22 always ask the question, would they voluntarily of their
23 own accord back up that fund, if necessary.

24 The approach we took with Enexus is to
25 enhance, essentially, what we have as a contractual

1 commitment from what we have now to what we would have
2 under Enexus because that 60 million dollar letter of
3 credit would actually -- I think it's a little different
4 than the original 60 million dollar guarantee we have
5 now. The new 60 million dollar letter of credit would
6 be available for decommissioning. I don't know -- the
7 other one is a little bit different. But I wouldn't
8 want to characterize the 60 million dollar facility now
9 or in the future as being the sole solution on
10 decommissioning, given the dollars involved. So --

11 CHAIRMAN CUMMINGS: I -- I was going
12 to say, how --

13 COMMISSIONER O'BRIEN: Yes.

14 CHAIRMAN CUMMINGS: -- how far behind
15 adequacy is --

16 COMMISSIONER O'BRIEN: Right. Right.

17 CHAIRMAN CUMMINGS: Are we into the
18 hundreds of millions?

19 COMMISSIONER O'BRIEN: Right.

20 CHAIRMAN CUMMINGS: Sort of behind?

21 COMMISSIONER O'BRIEN: I think -- I
22 think, you know, the way we try to look at the
23 decommissioning fund is that there is a certain amount
24 of dollars in the fund today. And if you pick a time
25 horizon of, say, 20 years, and you look at a pretty

1 conservative projection of what the fund can earn and
2 compare it against its financial obligations, which
3 occur in, you know, sort of static points. There's
4 various points where funds are going to be needed. That
5 the gap between how much money is in there today and
6 what you'd need to have over that 20-year period is not
7 that significant. This is all an analysis that we
8 provided to the Public Service Board.

9 So the nature of the -- I would never
10 want to -- I would be very cautious about viewing the
11 decommissioning shortfall as simplistically a difference
12 between 400 plus or minus million dollars today versus a
13 billion dollar plus or minus liability in the future
14 because a lot happens between those two numbers,
15 especially over time.

16 What we had hoped to do, too, with
17 that decommissioning structure is, with Enexus and the
18 addition of the time that the plant is going to operate,
19 that we would actually be able to improve our situation
20 when it comes to the -- the notion of safe store. That
21 if we were to leave everything as it is today, don't
22 extend the license of the plant and, based on what was
23 agreed to in 2002 and what the NRC, you know, program
24 is, then the plant would be allowed to go into safe
25 store to the fullest extent that the licensee chooses

1 to. And what we hope to do is to come to an agreement
2 that would balance the interests between the two -- the
3 two of us, the State and the owner, that would not just
4 bridge the funding difference, but also put a -- a time
5 stamp on when the plant would begin to be dismantled.
6 Because it's -- it's concerned me for some time, I --
7 the notion of leaving that as an open-ended question.
8 Of how long the plant would sit there and -- and be left
9 untouched. And I think that's part of what we're, you
10 know, we've been reticent about, you know, forcing the
11 issue, so-to-speak, or at least being aware of the risk
12 that, when you take a step to sort of just not relicense
13 the plant 2012 and whatever the reasons may be and
14 sounds as they may be, that more than likely means that
15 some of the things we dislike the most, the plant
16 sitting as it stands and the waste sitting where it is,
17 would be -- would be with us for a long time to come,
18 more than likely. And that's just sort of part of the
19 bargain. And I -- and I would characterize it for --
20 for a lot of people as probably two less than ideal
21 choices. And you know, I think -- so that's how I would
22 look at it.

23 As far as the Senator referenced, you
24 know, a lot of things that are unanswered. I think -- I
25 think there is a lot of information that has been

1 provided that, if I were to take myself back 60 days or
2 so, previous to the sort of unfortunate events that have
3 unfolded, I would have said to the same committee here
4 that a lot of questions have been answered in terms of,
5 you know, a couple years ago out big focus was on
6 reliability and we conducted a very extensive audit that
7 came back and said the plant can be operated reliably.
8 And -- and I also would say that, you know, if -- if you
9 had some more clarity about the power arrangement and
10 the decommissioning, which I would argue, too, could be
11 done certainly within the regulatory process and we were
12 advocating that that's where the legislative vote should
13 focus. And in some respects, it strikes me that it's
14 very difficult for this body to look at the entire sort
15 of body of evidence about Vermont Yankee and then make
16 that the basis of your vote, as opposed to operating in
17 sort of a role of saying we are satisfied in a principal
18 basis about Vermont Yankee and to give the details to
19 the Public Service Board to -- to iron out the details
20 like what is the nature of the power agreement, what is
21 the nature of the decommissioning fund.

22 And because I think that, in many
23 respects, at the end of the day, there's always going to
24 be data about, to be entirely honest, about a plant like
25 Vermont Yankee or any other nuclear facility or any

1 major industrial facility, for that matter, there will
2 always be data that will get people's attention and will
3 be discussed and what have you. Some things have the
4 potential to be serious, many do not. But just the
5 sheer sort of awareness I think causes unease.

6 But at the end of the day, there's
7 sort of a threshold question that perhaps has to be
8 answered, which is, is -- is the State of Vermont
9 comfortable with hosting a nuclear facility? I think,
10 because to sort of try to final in some form in a bill
11 in a legislative process be able to whittle this all
12 down to sort of the here's why we're going to not
13 license it, or here's why we are going to license it
14 with absolute completeness, I just don't -- I just worry
15 that, or I wonder if that's really possible. And so
16 this is really about a comfort level, per se.

17 CHAIRMAN CUMMINGS: And I'm glad you
18 said that because we are not --

19 UNIDENTIFIED MALE SPEAKER: Yes.

20 CHAIRMAN CUMMINGS: -- trying to do
21 that. I think that the legislature has been charged to
22 do is decide whether or not we want to host a facility
23 and what -- or not a facility but this facility for
24 another 20 years.

25 COMMISSIONER O'BRIEN: Um hum.

1 CHAIRMAN CUMMINGS: Given what we know
2 about its --

3 COMMISSIONER O'BRIEN: Right.

4 CHAIRMAN CUMMINGS: -- present -- and
5 also this facility with its present management, or under
6 its present owner.

7 COMMISSIONER O'BRIEN: Um hum.

8 CHAIRMAN CUMMINGS: It's this
9 facility. And that's what the bill says. There are no
10 details in the bill. I think we know that it will go to
11 the Public Service Board. But there are a lot of
12 unanswered questions that there -- you know, the power
13 purchase agreement was supposed to be agreed to, what,
14 last year? And then it got out and it's -- can't be
15 agreed to. There's no real -- no real commitment that
16 that fund would be there, the decommissioning fund, in a
17 reasonable amount of time.

18 COMMISSIONER O'BRIEN: Um hum.

19 CHAIRMAN CUMMINGS: And I think those
20 have been some really big issues for this legislature.

21 I think the thing that concerns me
22 when we talk about the worry over time, those lines
23 cross and I was reading the original sale and the MOU,
24 50 percent of that MOU is what happens with the excess
25 money in the decommissioning fund and that was in 2002.

1 That wasn't that long ago. That was eight years ago.
2 And we were worried about excess money and the excess
3 revenues. I don't know how long it took, but, you know,
4 those excess monies have gone away awfully quickly and
5 we're now looking at hundreds of millions of dollars in
6 deficit, but the plan has remained the same. And I
7 think that's a concern when we start projecting forward
8 because we weren't real good at what we projected eight
9 years ago. So I think those are some of the concerns
10 that we've been listening to and --

11 COMMISSIONER O'BRIEN: Right.

12 CHAIRMAN CUMMINGS: -- and I -- you
13 know, I know --

14 COMMISSIONER O'BRIEN: Right.

15 CHAIRMAN CUMMINGS: -- that your
16 department shares them.

17 COMMISSIONER O'BRIEN: Right.

18 CHAIRMAN CUMMINGS: And that we are, I
19 think concerned about the same thing.

20 COMMISSIONER O'BRIEN: Right.

21 CHAIRMAN CUMMINGS: On the other hand,
22 this committee hasn't been looking at the recent tritium
23 leaks. I don't think this decision is coming because of
24 any of the events in the last 60 days. We -- you know,
25 Health and Welfare and Natural Resources are dealing

1 with the pollution and public health threats.

2 COMMISSIONER O'BRIEN: Um hum. Um
3 hum.

4 CHAIRMAN CUMMINGS: We have been
5 watching the response of the owner-operator. But I
6 think this is based on four years of testimony and we
7 also understand that time is getting short. That
8 utilities, that Entergy needs to know the intent of the
9 legislature going forward on this important issue so
10 that adjustments can be made.

11 COMMISSIONER O'BRIEN: Um hum.

12 CHAIRMAN CUMMINGS: We are -- we are
13 in 2010 and things will start to happen either way. And
14 so we're doing that.

15 COMMISSIONER O'BRIEN: Right.

16 CHAIRMAN CUMMINGS: I had one last
17 question for you.

18 COMMISSIONER O'BRIEN: Sure.

19 CHAIRMAN CUMMINGS: I want to give you
20 the ability to comment. It was brought to our attention
21 a few hours ago that there's been a request by the
22 Department to either open or continue with Docket 7440
23 and there has been a whistleblower allegation from an
24 anonymous employee.

25 COMMISSIONER O'BRIEN: Um hum.

1 CHAIRMAN CUMMINGS: That there was a
2 steam leak in the off-gas system.

3 COMMISSIONER O'BRIEN: Right.

4 CHAIRMAN CUMMINGS: And that it was
5 not reported. It was patched and that that had taken
6 place and I just wanted to give you a chance to comment
7 on that one because I gather it's all over the building.

8 COMMISSIONER O'BRIEN: Yes. I guess.
9 I -- you know, the way we looked at this is that -- and
10 -- and the way I think it's supposed to work in the
11 industry is that any sort of allegation like that has to
12 be taken seriously and -- and investigated to find out
13 if it's, in fact, valid and what it's ramifications are.
14 And so the way we took that communication, once we got
15 it from the public oversight panel was to forward it to
16 the board, alert the Public Service Board that we had
17 that communication. We couldn't speak to whether it was
18 accurate or not at this point. And we also shared it
19 with the Attorney General's Office because the Attorney
20 General's Office is investigating essentially the whole
21 nature of how -- what was disclosed and when by the
22 company, by the owner, during the audit and -- and what
23 have you.

24 It's, you know -- you know, it's --
25 it's concerning if that proves to be accurate because it

1 would certainly, you know, add a pretty clear indication
2 that there was knowledge by the company, you know, prior
3 to the audit, you know, despite what we were told. That
4 there was pretty good knowledge of the buried pipes and
5 -- and the like. And so we're certainly very interested
6 in finding out, you know, what the circumstances are
7 there and, you know, that's, you know, actually a big,
8 important part of the industry in my mind, in terms of
9 transparency, is that there is a role for whistleblowers
10 and there's a role for people who are employees, if they
11 think that they see or are aware of things that don't
12 seem quite right. And there's a process to handle this
13 through -- you know, throughout the -- the system and
14 the NRC. So we're certainly going to look at it very
15 closely.

16 ***

17 You know, there's -- there's all sorts
18 of things that I could have people come in and talk
19 about safeguards and systems and what have you, the NRC,
20 but, you know, the fact of the matter is, it is a plant
21 that will have things that will -- maintenance
22 procedures and systems can have problems and have to be
23 repaired. That's the nature of it.

24 You know, I think, for me, the real
25 difference maker wasn't the -- wasn't the tritium

1 contamination, because that's happened with a lot of
2 plants and it's a -- it's a problem that the NRC has
3 identified for corrective action. But it was the
4 somehow getting the wrong information about the buried
5 pipes was more of an issue for me than -- than the
6 tritium. The tritium can be resolved. However
7 unpleasant and concerning it is, it can be resolved.
8 But the -- getting the wrong information on something
9 like that, you know, was really where I saw a real
10 difference.

11 CHAIRMAN CUMMINGS: Thank you.

12 ***

13 MR. KEEFE: And we expect the power
14 will be there to replace Vermont Yankee. We also expect
15 it will come with a cost -- a cost factor, as well.

16 And I would just urge the committee to
17 look carefully at the timing of this bill and I -- I --
18 we notice that the bill appears to give the Public
19 Service Board jurisdiction over this matter and I guess
20 we're not quite certain how clear that jurisdictional
21 pass is, but I'll just say that a lot of these issues
22 we've felt from the beginning are better decided at the
23 Public Service Board. But it's surely within the
24 legislative prerogative to lay conditions on those and
25 to decide what you want. And this is clearly a

1 legislature prerogative to do this sort of bill, but we
2 are also comfortable with some of these matters being
3 decided at the Public Service Board. So that concludes
4 my --

5 CHAIRMAN CUMMINGS: And again --

6 MR. KEEFE: -- remarks.

7 CHAIRMAN CUMMINGS: -- I know you
8 couldn't get in the room. The bill (inaudible) states
9 that the legislature will allow the Public Service Board
10 to go forward with the certificate of public good. The
11 bill, as it stands, unless there's numerous floor
12 amendments that we can't hold onto, has no specifics
13 yet. And we have a -- we have a legal obligation to --
14 to do that before the Public Service Board can start
15 forward. And I know Bill Deehan did a great job in here
16 last week.

17 MR. KEEFE: Thank you.

18 CHAIRMAN CUMMINGS: I think that's
19 increased all of our comfort levels, to know that
20 Vermont will stay on. That rates are going to go up, if
21 we take the present offer from Vermont Yankee or if we
22 go to the market. They're going to be about the same.
23 That isn't our comfort level, but it lets us know that
24 we're not seeing a huge increase.

25 And I know the revenue sharing is very

1 important to utilities, but Vermont Yankee hasn't --
2 Vermont Yankee wants that back, is my understanding, in
3 return for a power agreement at this point.

4 MR. KEEFE: Right.

5 CHAIRMAN CUMMINGS: And they haven't,
6 that we know of, come forward with --

7 MR. KEEFE: Certainly, their desire,
8 as stated in the December offering --

9 CHAIRMAN CUMMINGS: Right.

10 MR. KEEFE: -- was to swap the revenue
11 sharing agreement for a power purchase agreement.

12 CHAIRMAN CUMMINGS: Right.

13 MR. KEEFE: But at this point in time,
14 Vermont, through the utilities, has that revenue sharing
15 agreement.

16 CHAIRMAN CUMMINGS: Right.

17 MR. KEEFE: Sort of on our side of the
18 negotiating table.

19 CHAIRMAN CUMMINGS: But Vermont -- and
20 if we shut it down, then there's no -- there's no
21 revenue sharing.

22 MR. KEEFE: Right. The revenue
23 sharing agreement -- the value of the revenue sharing
24 agreement, and it's a range of potential values,
25 granted, would only apply, of course, if the -- if the

1 plant runs. And it's a 10-year value.

2 CHAIRMAN CUMMINGS: Right. If the
3 plant runs and if power goes above \$61 a kilowatt hour
4 or --

5 MR. KEEFE: Sixty -- yeah, the 60 --
6 the so-called strike price.

7 CHAIRMAN CUMMINGS: Right.

8 MR. KEEFE: That does escalate over
9 time.

10 CHAIRMAN CUMMINGS: Yes. Okay. Any
11 questions? Thank you.

12 ***

13 MR. MOORE: Okay. Thank you, Madame
14 Chair. My name is James Moore. I'm the clean energy
15 program director with the Vermont Public Interest
16 Research Group. I appreciate the opportunity to be here
17 today.

18 Based on long-standing Vermont rate-
19 making doctrine, based on economic risks to our
20 communities, based on reliability concerns and based on
21 common sense, it should not be determined, we feel, that
22 the operation of Vermont Yankee nuclear power station
23 passed its scheduled closure date in 2012 would promote
24 the general welfare.

25 The term general welfare actually

1 appears twice in our US Constitution. It's right up
2 front in the preamble. I won't read you the
3 Constitution, but I've got --

4 CHAIRMAN CUMMINGS: Thank you.

5 MR. MOORE: -- part of it here for
6 you, if you want to see where it shows up. But it's
7 this commitment to promote the general welfare of all
8 people and not the narrow interest of a subset of a
9 population or a single individual corporation that
10 you're being asked to consider, as you consider
11 Vermont's energy future.

12 Mr. Theobalds listed a number of
13 studies and the facts that are not available. This is a
14 problem of Entergy's making. The reason that the
15 comprehensive vertical assessment has been reopened is
16 because they provided misinformation.

17 The Attorney General is looking at
18 whether Vermont Yankee was incompetent and that the 12-
19 plus staff and executives there who stated that there
20 were no underground pipes just didn't know any better,
21 or whether there was actually intention to mislead. I
22 don't know how the Attorney General is going to come
23 down on that. I don't think it matters in terms of
24 determining the general welfare moving forward because
25 neither of those are good options for Vermonters.

1 With all due respect, the issue of
2 tritium was brought up and that's not the purview, as
3 Madame Chair mentioned, of this committee. In terms of
4 radiological health and safety issues, that's not what's
5 being discussed today, nor what's being contemplated in
6 the bill.

7 And Entergy made their best rate offer
8 and they made it public and they filed it and put it out
9 there in the newspapers and -- and it wasn't deemed to
10 be good enough. This is a situation of their making.

11 The burden to show that operation past
12 2012 of Vermont Yankee would promote the general welfare
13 rests with Entergy Vermont Yankee. Entergy has been
14 attempting to make that case for at least the past four
15 years and they've failed to do so.

16 At a certain point, the obligation of
17 the legislature to look out for what's in Vermonters'
18 best interests and to set our state energy policy moving
19 forward becomes essential and we believe that we've
20 reached that day.

21 In terms of Vermont rate-making
22 policy, there's one thing I wanted to highlight and that
23 is intergenerational inequity. The doctrine of just and
24 reasonable rates requires that those ratepayers who use
25 an asset pay for it, rather than shifting costs to

1 future generations of ratepayers who have not used that
2 asset. That's basic rate-making doctrine here in
3 Vermont. Entergy Vermont Yankee has refused to adhere
4 to this tenant of rate-making policy and that alone is
5 reason enough to determine that they do not promote that
6 their continued operation does not promote the general
7 welfare. They are not a corporation that's willing or
8 inclined to play by those rules.

9 To insure the future generations of
10 Vermonters are not asked to pay for any of the reactor's
11 cleanup costs, all decommissioning costs must be
12 assessed and placed into rates while the plant is in
13 operation. Clearly, with the shortfall that we have
14 now, that hasn't occurred. And furthermore, Entergy has
15 actually refused to adhere to that principal moving
16 forward. On page two of their legal brief to the State,
17 they said, and I quote, "This plant's only source of
18 revenue is electricity sales. If we know that there's a
19 date certain on decommissioning, then a portion of those
20 electricity sales and, therefore, the price of
21 electricity has to reflect whatever mechanism we use to
22 get to that date certain." Commissioner O'Brien talked
23 about a time stamp.

24 Stated another way, and this is still
25 on -- from their legal brief, quote, "Stated another

1 way, only so much value from continued operation can be
2 shared with Vermont and still leave a business case to
3 operate the Vermont Yankee station." In other words, if
4 you make them play by the rules that everyone else is
5 supposed to play by, then they may not have a business
6 case. And they're asking for a different set of rules
7 and that's not okay moving forward.

8 Entergy Vermont Yankee has taken a
9 similarly brazen stance on the cost of post-2012 spent
10 fuel management costs; also estimated in the hundreds of
11 millions of dollars.

12 When looking at the economic risks
13 associated with continued operation, harm has already
14 come to Vermont's reputation based on Entergy Vermont
15 Yankee's existing operation. And it can reasonably be
16 assumed that, as the reactor gets older and continues to
17 have accidents, leaks and other mishaps, additional harm
18 to our state's image will result. Just over the past
19 month, approximately one thousand stories have shown up
20 in newspapers, on TV stations, on the radio, literally
21 across the country and, in some cases, out beyond our
22 borders. For a state that relies in large part on
23 tourism to fuel our economy, this is not good press.
24 The economic risk to our state increases exponentially
25 as we consider lower probability but higher impact

1 events such as increased environmental contamination or
2 serious mechanical failures of the reactor.

3 In terms of reliability concerns
4 moving forward, it's the quote, you know, past
5 performance is not an indication of future results.
6 We've all probably heard that before at the bottom of
7 various financial statements. But we make a lot of
8 decisions based on that nonetheless. We look at past
9 performance.

10 The Vermont Yankee reactor is old and
11 too old to be reasonably counted on to reliably provide
12 power moving forward.

13 One could argue and, in fact, Entergy
14 has, that the plant is very reliable because they've
15 been running it full-tilt. However, this measure of
16 reliability actually reminds me of my last car that
17 always, always, always got me from point A to point B
18 until it literally left me on the side of the highway
19 with no car, completely broken down and it was scrapped.
20 The car was having some problems. It had a lot of miles
21 on it and it didn't sound great. So one could ask, you
22 know, should I have retired it earlier and gotten a new
23 car and saved myself the headache of being at the side
24 of the road totally stranded. I don't know. But it
25 wasn't a nuclear reactor, either. And, you know,

1 waiting to the dying day of that car didn't have serious
2 consequences for me.

3 Vermont Yankee's own track record,
4 exceedingly long and an exceedingly long list of
5 deferred maintenance items and apparent corporate
6 culture indicate that reliable operation of the reactor
7 should be of serious concern to the State.

8 End Disk 10-54/Track 2

9

10 Begin Disk 10-55, Track 1

11 -- financial obligations associated
12 with decommissioning the Vermont Yankee nuclear reactor.
13 He asked the question again earlier this afternoon. "So
14 who exactly is responsible?" And we've gotten a number
15 of different answers; some of them under oath and some
16 of them not.

17 Entergy's CEO, J. Wayne Leonard,
18 indicated that, even at -- if our regulators or those in
19 New York were to determine that the corporation's
20 proposed spin-off of Vermont Yankee to new ownership
21 would not be in the State's best interests, that the
22 corporation would find another way to do it anyways.
23 And I quote from a Bloomberg news story, "Entergy would
24 have, quote, probably twenty different plans, end quote,
25 to choose from, from -- from as alternatives should New

1 York regulators reject the spin-off." And he went on to
2 state, "One option would be to spin off its utility
3 business into a separate company which wouldn't change
4 the ownership of the Enexus plants, like Vermont Yankee.
5 Leonard said that the parent company would continue to
6 own the plants and would be saddled with the debt that
7 Entergy's utilities wouldn't have to take with them."
8 That's the corporation that we are dealing with. That
9 doesn't care if our regulators determine whether
10 something is in the public interest of Vermonters or not
11 because they will find another Wall Street way around it
12 and leave Vermonters potentially with the bill in the
13 future.

14 Vermont has a set -- has set an energy
15 policy focused on increased use of renewable energy
16 resources and energy efficiency. Those supply options
17 are available. Their prioritizing -- prioritization
18 moving forward fits with the State's energy policy and
19 operation of Vermont Yankee beyond its scheduled closure
20 date cannot reasonably be determined to promote the
21 general welfare here in Vermont.

22 Thank you very much for your time and
23 consideration. I brought maybe not quite enough copies.

24 At the end, I also had one section
25 that I won't address right now just in terms of state's

1 rights. There have been an increasing number of what I
2 would call fear mongering about state's rights and
3 preemption issues. There's a significant amount of case
4 law, a fair amount of it is referenced in VPIRG's legal
5 brief in front of the Vermont Public Service Board. The
6 states have rights here, so long as we don't tread on
7 the areas where the federal regulators have preemption
8 issues, then the State absolutely has the right to look
9 out for our own best interests. And I appreciate the
10 opportunity to be here.

11 UNIDENTIFIED MALE SPEAKER: Is that
12 what this is about?

13 MR. MOORE: This is the full testimony
14 and then just at the very end is a clip, it's an excerpt
15 from NRC's generic environment impact statement for
16 license renewal of nuclear power plants where they
17 specifically lay out the NRC has no role in energy
18 planning decisions of state regulators and utility
19 officials as to whether or not a particular nuclear
20 plant should continue to operate. That's not the
21 NRC's --

22 CHAIRMAN CUMMINGS: Need at least two
23 more.

24 MR. MOORE: Okay. Jurisdiction.
25 There are a couple other areas there and this is just a

1 small bit of that.

2 CHAIRMAN CUMMINGS: Okay. Any
3 questions from the committee? Thank you.

4 MR. MOORE: Thank you.

5 ***

6 MR. STANNARD: Delay, delay, delay,
7 Madame Chair. I'll do my best not to delay this
8 anymore. My name is Bob Stannard, for the record. I'm
9 here on behalf of Citizens -- Vermont Citizens Action
10 Network, a citizens group that has seven chapters in
11 five states.

12 Well, first of all, let me say that,
13 as drafted, VCAN opposes the bill before you. The bill
14 would allow the Public Service Board to issue a
15 certificate of public good for the continued operations
16 of the Vermont Yankee nuclear power plant. There are
17 many good reasons why the bill should not advance and
18 I'll only speak to a few of them.

19 First and foremost, we were told 38
20 years ago that we had a plant for 40 years. That was a
21 promise made and that's a promise that should be kept.
22 People expect that promise to be kept.

23 The question before you, however, is
24 whether or not this aging power plant will promote the
25 general welfare of the State of Vermont. It's a nuclear

1 power plant that is now leaking radioactive isotopes
2 from aged pipes that have never been inspected because
3 the regulators have no serious inspection program. And
4 this does not promote the welfare of our state. An
5 aging nuclear power plant that is leading radioactive
6 isotopes into our groundwater through pipes that we have
7 been told by company executives under oath did not exist
8 does not promote the general welfare of my state.

9 Having this story appear in what I
10 thought to be hundreds, and apparently is thousands of
11 media outlets throughout the country, leaving a rather
12 negative impression of my state does not promote the
13 general welfare of Vermont.

14 The promise of some sort of deal for
15 cheap power will not promote the general welfare of our
16 state because power from this aged plant is not cheap.
17 It must be subsidized by taxpayers at every step of the
18 way. And I appreciate the previous witness' comments,
19 but what we do is we look at this very myopically. We
20 are looking just at the cost of the power from the plant
21 and that money is coming out of our right pocket while
22 we're not looking at the funds coming out of our left
23 pocket. And those include the fact that no insurance
24 company will insure a plant. Instead, it must be
25 insured by you and me. Wall Street won't finance a

1 nuclear power plant. The tax dollars must be used for
2 loan guarantees. These dollars come from you and me.
3 And, of course, there's the pesky
4 little issue of the waste. Energy reps have sat in this
5 chair and they have indignantly complained that you and
6 I have not done enough to deal with their waste problem.
7 A company that has profited from this plant does not
8 have the responsibility for the long-term storage and
9 protection of this waste. You and I and our
10 grandchildren and their grandchildren and on and on will
11 bear these costs. And these costs will be enormous and
12 they, too, will not promote the general welfare of my
13 state.

14 It's hard to talk about the plant
15 without talking -- and the Vermont's general welfare,
16 without talking about the plant's owner.

17 Going forward, we are being asked to
18 deal with an, apparently now, a new highly leveraged
19 debt-ridden company called Enexus, should this happen,
20 because that's where the proposal has come from. I
21 guess that could be a double-edged sword. The purpose
22 of this new company, of course, is to shield the parent
23 company, Entergy, from liability. It was in this chair
24 and I think it was last year, but it might have been two
25 years ago, because I'm getting older, slightly, where he

1 began describing to you a company called then Spinco or
2 Newco now known as Enexus by saying that it's
3 unfortunate that the letters LLC stand for limited
4 liability corporations because it leaves the impression
5 that what we're trying to do is limit our liability.

6 The owners of this company have been
7 less than honest with Vermont since the day they bought
8 the plant. Vermonters thought we were dealing with
9 Entergy, only to learn that we were dealing with a
10 newly-created LLC known as ENVY, designed to allow for
11 the cash flow to go back to the parent company. But, of
12 course, any liability would remain with the new LLC.

13 We then thought safe store was a plan
14 for cool down and we've now learned that safe store
15 could go on for 60 years here.

16 We thought they would abide by the
17 deals that had been made, such as installing radiation
18 monitoring equipment at the fence line. That didn't
19 seem like it was too much to ask. They did not do that
20 and they called that an oversight.

21 You will hear cries for more process.
22 We've heard that today. Well, I won't make another
23 comment about that, but anyways, delay, delay, delay.
24 It was just a few short weeks ago, I guess I'd say what
25 a difference a leak makes. Before we had the leak it

1 was, "We need to vote now." Now we don't want to vote
2 until we can fix leaks. And this plea from me, I guess,
3 is nothing more than a ploy for buying time in hopes of
4 restoring or spinning this company's reputation.

5 We've heard enough and we've seen
6 enough to decide whether or not Vermont should be
7 tethered to this company or some sham shell of a
8 corporation for the next 20 years. Entergy is not going
9 to change. The plant, like myself, is not going to get
10 any younger. This deal will never be good enough
11 because the legacy cause of this plant far outweigh the
12 prospect of a good deal for Vermont or its utilities.

13 I would like to speak to a section of
14 the bill, Section 2(b), which I found to be particularly
15 amusing. Some of you know I have a sense of humor.
16 Didn't realize Aaron had one, as well, because he
17 drafted the bill. It says -- I -- Section 2(b) says
18 that you must find that storing waste here for 20 years
19 promotes the welfare of my state. I don't see how being
20 a host of a high-level nuclear waste dump is something
21 that I want to see written up in Vermont Life, but maybe
22 I could be missing something.

23 There is nothing that this plant or
24 the folks that own it can do to promote the general
25 welfare of the State of Vermont. The question is very

1 simple. If you allow the plant to continue to operate
2 for another 20 years, will that promote the general
3 welfare of the State of Vermont? Entergy's track record
4 of misleading regulators, legislators, while operating
5 an aged leaking collapsing plant speaks for itself. And
6 the answer is as simple as the question. I would ask
7 that you vote no on this bill. I realize the bill will
8 probably be coming out, but I hope that the bill does
9 vote no.

10 And before I close, I would also
11 reiterate that the call for delay because of -- we need
12 to -- the results of the investigations and a power
13 purchase agreement I find also somewhat amusing because,
14 again, they are situations of the making of the company.
15 So I guess I could use the logic, if we keep creating
16 situations, we can ask for delays forever on this vote.

17 I was interested to learn today of the
18 whistleblower, and I realize it's an allegation, but if
19 this does prove to be true, this is a very serious
20 allegation that these pipes that we were told we didn't
21 have actually did leak a couple of years ago and were
22 fixed unknowing to anyone. I have no idea where that's
23 going to go, but if that is actually a true allegation,
24 that in itself should be just about enough of this plant
25 and of this company doing business in the State of

1 Vermont.

2 And I would agree with my friend Mr.
3 Driscoll, he's absolutely right, we will have to live
4 with the consequences, and I believe that the
5 consequences of going forward with this plant for 20
6 more years far outweigh any opportunity for them to
7 promote the public welfare of my state. And I
8 appreciate the opportunity to be here and say this.

9 CHAIRMAN CUMMINGS: Okay. Thank you.

10 MR. STANNARD: I'll take any
11 questions, if you have any.

12 CHAIRMAN CUMMINGS: Any questions?
13 Okay, if not --

14 UNIDENTIFIED MALE SPEAKER: Thanks.

15 CHAIRMAN CUMMINGS: -- thank you.
16 Timing is just about perfect. I'm going to give the --

17 UNIDENTIFIED MALE SPEAKER: Is Ray
18 here?

19 CHAIRMAN CUMMINGS: Ray is on the
20 phone at 3:30 and we've been trying to -- right on the
21 ball. 3:30. And we can't get him before that. So I'm
22 going to give the committee a half an hour break. When
23 we come back, we will take Ray's testimony. And I think
24 I've told most of you, the Secretary of the Senate
25 informed me this morning that, in order to get this up

1 for vote before we leave for town meeting, we will need
2 to vote today so that there's time to go to leg counsel.
3 They're on notice to stay here until we finish because
4 it does have to be proofed. So I would hope that we
5 will, when we return, be able to vote later this
6 afternoon. Okay.

7 End of Track 1

8

9 Beginning of Track 2

10 CHAIRMAN CUMMINGS: -- Senate Finance.
11 We had a pretty full room today and it's starting to
12 fill up again. The committee is here. And I know
13 you've e-mailed and said you wanted to talk to us, so we
14 thought we'd give you about 15 minutes to tell us what
15 you'd like.

16 MR. SHADIS: Thank you, ma'am. In
17 short, I hope -- I hope by now that you have a copy
18 before you of the New England Coalition --

19 CHAIRMAN CUMMINGS: It's being passed
20 out as you speak.

21 MR. SHADIS: Pardon me?

22 UNIDENTIFIED MALE SPEAKER: This is
23 something else.

24 CHAIRMAN CUMMINGS: We now have it.
25 It's being passed out as you speak.

1 MR. SHADIS: Okay. Perhaps, you know,
2 we can go down through it as -- as a way of moving this
3 along. In short, one part of the discussion from our
4 position of observers, one part of the discussion that
5 seems to be lacking is the discussion of the economic
6 consequences of closing Vermont Yankee. I know there
7 have been several studies that have been done with
8 respect to that topic. So far, they appear largely to
9 have been computer modeling and computer projections as
10 to what the affects might be of closing the plant.

11 The New England Coalition back in 2002
12 took another approach entirely, and we think it's one
13 that's equally valid. And that is the case study
14 approach. Basically, you have a situation that you're
15 confronting. You may see it as a very practical thing
16 to look around and see what's happening with your
17 neighbors who are experiencing the same situation, and
18 that's what we did. We looked at the -- at the closing
19 of the Maine Yankee nuclear power station. There are
20 many, many similarities between the region that Maine
21 Yankee was located in and Windham County and Southern
22 Vermont. And there are a few differences also.

23 The Maine Yankee area hosted a couple
24 of really large employers, in addition to Maine Yankee.
25 Maine Yankee topped out at around 480 employees, but the

1 area also hosted -- well, hosted and still hosts, the
2 Bath Ironworks which is a ship building yard. And their
3 employee number vary between 5,000 and 7,000. The
4 largest employer in the area. We have a couple of major
5 hospital complexes. Together, they employ more than a
6 thousand employees. We have a number of small machine
7 shops; together, they employ probably 800 employees in
8 the -- in the area that formerly hosted the Maine
9 Yankee. This is -- this is important because it plays
10 into the question of -- of multipliers. Every report
11 that has gone to the public so far on Vermont Yankee has
12 leaned heavily on the theory of multiplying affects.
13 That is to say, you know, every dollar that's spent in
14 the community then gets re-spent and it goes from hand-
15 to-hand. The longer it's in the greater its economic
16 strengthening affects are. In the case of Maine Yankee,
17 we found that not to be true. There was almost zero
18 multiplier affect. And when Maine Yankee took this
19 question to an economist, they hired a -- a study done.
20 They found that the multiplier affect hardly applies to
21 nuclear stations. The term that their economist Charles
22 Coleman used was -- was that a nuclear plant is
23 something like an economic island. The kinds of
24 materials that a nuclear plant buys are very specific to
25 nuclear generation and are very rarely manufactured or

1 -- or even wholesaled in the area that nuclear plants
2 are located in. Typically, nuclear plants are located
3 in relatively rural areas and very rarely do those areas
4 supply the kinds of things in bulk that nuclear plants
5 require to keep running. So, you know, that -- that one
6 just simply did not apply.

7 The other big question that's been
8 popping up is really the first item that we addressed in
9 our case study. And that is what happens to the
10 employees of the nuclear station? If you dispense with
11 the introductory material and go to page 10 of the
12 entire package, early on in the -- in the economic
13 study, you'll see a heading, "Workers." It is the first
14 big topical area in our report. I think -- and I'll
15 just sort of free-wheel down through that -- through
16 that topic, if I may.

17 First, when a plant terminates
18 operation, the doors, the gates of the plant are not
19 then shut and the employees dismissed. The plant must
20 maintain all of its systems until it has developed a
21 thorough decommissioning plan and that plan has been
22 accepted by the Nuclear Regulatory Commission.
23 Typically, this takes a year. It can take two years.
24 It can take longer. So the employees that perform all
25 the maintenance tasks, who run the spent fuel pool, for

1 to around 420 employees, 430 employees, and this is out
2 of an original number of 480. So the decommissioning
3 itself took just a little over seven years. And so this
4 is a transition period. The -- there is no shock of
5 instantly putting people out on the street. Maine
6 Yankee did a number of job fairs in order to ease
7 transition for their employees. They also set up a
8 program for a early retirement package. They had about
9 125 employees who were either already eligible for
10 retirement or could tap into this retirement package
11 that they put together specially. So all-in-all, that
12 eased the question of transition.

13 And let me say that -- that with
14 respect to transition and nuclear stations that,
15 typically, in the nuclear industry, employees move from
16 plant-to-plant quite often. Vermont Yankee does have a
17 number of career employees. Mr. Dave McElwee that is
18 the liaison for the State has been at Vermont Yankee
19 something in excess of 20-something years. On the other
20 hand, when the company chose to put its employees up
21 front in advertising, four out of the five of those
22 employees had been with the company less than 10 years.
23 Three of them had been with the company for less than
24 two years. We had one who was brand new to the company.
25 So, you know, those are folks who came onboard well

1 after the controversy over whether or not the plant
2 would be relicensed happened. And I don't know if -- if
3 Entergy intended that to be typical of their employees,
4 but it was typical of the employees that they -- they
5 put up front in the discussion.

6 CHAIRMAN CUMMINGS: Okay.

7 MR. SHADIS: If I might just move very
8 quickly to the -- to the tax question. The Town of
9 Wiscasset, which was the host town for Maine Yankee, was
10 very similar to the Town of Vernon. It is essentially a
11 village and it depended on Maine Yankee, at peak, for
12 more than 96 percent of its tax revenue, property tax
13 revenue. The town was able, over time, not only to
14 build a -- a beautiful infrastructure, but to set aside
15 about 13 million dollars in a rainy day fund which
16 helped in transition.

17 After the -- the plant was closed, the
18 town had negotiated with the plant a step-down graduated
19 tax reduction over -- over the period of
20 decommissioning, which, again, was about seven years.
21 So that toward the end of decommissioning, the annual
22 revenue of about 10 million in taxes had been reduced to
23 about one million, which is comparable to what Vernon
24 now receives from Vermont Yankee. Initially, Maine
25 Yankee had been paying about 10 times the amount of

1 taxes that Vernon now receives. I don't know why that
2 disparity exists.

3 The spent fuel installation. Every
4 stick of spent fuel that was ever radiated at Maine
5 Yankee remains onsite in 65 concrete canisters. The
6 town has negotiated with Maine Yankee a fee which is a
7 way of saying a tax for hosting that spent fuel. In
8 2008, Maine Yankee paid the Town of Wiscasset over
9 \$700,000, I believe it was \$770,000, I'd have to check
10 that number, for spent fuel storage. And, you know, in
11 the rough, that approximates what the Town of Vernon is
12 now receiving in taxes.

13 With that, I would like to simply sum
14 and say that New England Coalition chose to do this
15 little case study five years out from the initial
16 closing of Maine Yankee and so we -- we did it in 2002.
17 We figured that five years was long enough to develop a
18 trend or a track, but it was still within a period in
19 which the affect of closing would not be blended into
20 the overall economic background. And just very quickly,
21 here is a list of what we looked at. We looked at
22 employment numbers. We looked at -- at savings in -- in
23 our various banks. We looked at loan defaults. We
24 looked at the number of new loans, housing starts, sales
25 tax revenue, food stamp enrollment. We looked at

1 housing sales and wages and housing prices. We looked
2 at a housing price versus wage index. We looked at the
3 price of electricity. And we looked at bankruptcy in
4 the federal courts all over a period of five years.
5 From the time the plant closed until late 2001. And
6 what we found was a discernable negative in bankruptcies
7 in Federal Court. These were small numbers and there
8 was -- that's on a statewide basis. There was no way
9 that we could trace it or connect it to any possible
10 affect of the -- the closing of the plant. We simply
11 could not find the causative connection.

12 With respect to every other indicator,
13 either it was flat-lined or conditions were improving.
14 In other words, there were -- there were the same or
15 fewer food stamp enrollments. There were the same or
16 fewer loan defaults. In some cases, we were able to
17 establish a trend, a negative trend, but there was no
18 bump in the trend. For example, in 2001, we had a
19 national recession on. It affected Maine just like it
20 affected everybody else. We couldn't find any
21 differences that would reflect anything other than what
22 was going on statewide or nationally in the local
23 region. So -- So, in other words, we couldn't put any
24 connection, economic connection to the closing of the
25 plant.

1 It did affect the local area; that is,
2 the towns in the emergency planning zone around the host
3 town of Wiscasset, to the extent that Wiscasset's
4 valuation went down; therefore, it's contribution to
5 county government went down. At the same time, we had
6 a, approximately a three and a half percent overall
7 increase in county expenses and we had about a one and a
8 half percent increase on top of that due to Wiscasset's
9 devaluation. So other towns had to pick up that -- that
10 burden.

11 On top of that, the Town of Wiscasset,
12 because it has such really -- I don't know how to say
13 this, except the Town of Wiscasset was very generous in
14 terms of sharing its facilities. It hosted students in
15 its high school and in its junior high school, seventh
16 and eighth grade, from several other area towns. That
17 relationship had to change. They could no longer give a
18 discounted tuition. So those towns had an additional
19 tuition burden for students coming in.

20 The town had also been very generous
21 in sharing its first aid service and its fire department
22 services with surrounding towns. It still does that.
23 But at this point, you know, it is at increased cost to
24 its own residents. It's not on -- on Maine Yankee's
25 tab.

1 So in short, the -- it's not exactly
2 that our local economy came through the closing of Maine
3 Yankee unscathed, but it was an -- overall, a remarkably
4 small affect.

5 CHAIRMAN CUMMINGS: Okay. Thank you.
6 That's very helpful and perfectly timed.

7 MR. SHADIS: Thank you. Thanks for
8 your patience in listening to all that. I hope that --
9 that if you have -- any -- any of the committee members
10 or anyone has any questions, my e-mail address, phone
11 number, is on every report and feel --

12 CHAIRMAN CUMMINGS: Yes.

13 MR. SHADIS: -- free to contact us.
14 We will be issuing the full report, together with all
15 the attached tables and so on, on Monday and we will
16 hope to provide full copies to the members of the
17 legislature.

18 CHAIRMAN CUMMINGS: Okay. Thank you.
19 It is very helpful to have another perspective or
20 another way of assessing the economic impact and I
21 believe (inaudible) as a study mechanism. So thank you
22 very much.

23 MR. SHADIS: Thank you, ma'am.

24 CHAIRMAN CUMMINGS: Okay.

25 MR. SHADIS: Bye, now.

1 CHAIRMAN CUMMINGS: Yes. Bye-bye.
2 Okay. Committee, you have one more person who has asked
3 to talk to us --
4 End of Track 2
5

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ENTERGY NUCLEAR VERMONT)
YANKEE, LLC and ENTERGY NUCLEAR)
OPERATIONS, INC.,)
)
Plaintiffs,)
)
v.) Docket No. 1:11-cv-99
)
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.)

**LEGISLATIVE HISTORY APPENDIX
TO PLAINTIFFS' PRE-TRIAL BRIEF
VOLUME I**

LEGISLATIVE HISTORY APPENDIX

VOLUME I*

Entergy Nuclear Vermont Yankee, LLC v. Shumlin, et al.

1:11-CV-99 (jgm)

Pl. Ex. No.[±]	Document Description	Date	Page
Pl. Ex. 2 through 124	Excerpts from Committee Hearings and Floor Debates of the Vermont Legislature on H. 545 (Act 74)	2005	1
Pl. Ex. 126 through 155	Excerpts from Committee Hearings and Floor Debates of the Vermont Legislature on S. 124 (Act 160)	2006	35
Pl. Ex. 164 through 219	Excerpts from Committee Hearings and Floor Debates of the Vermont Legislature on S. 269/S. 364 (Act 189)	2008	54
Pl. Ex. 226 through 261	Excerpts from Committee Hearings and Floor Debates of the Vermont Legislature on H. 436	2009	87
Pl. Ex. 273 through 278	Excerpts from Committee Hearings and Floor Debates of the Vermont Legislature on S. 289	2010	95

* This Volume provides excerpted transcriptions of the audio recordings of legislative and committee sessions obtained from the Legislative Council. Each of these excerpts is also provided in excerpted audio recording form on the accompanying CD labeled “Legislative Record Audio Excerpts.” The accompanying Volume II contains key documentary evidence related to the legislative history.

[±] Plaintiffs’ exhibit numbers referenced herein correspond to the trial exhibit numbers assigned to each of the 301 original audio CDs obtained from the Legislative Council. For ease of reference, the exhibit number of the original CD from which each excerpt was transcribed is listed in bold below, and tracking information is provided to locate each excerpt on the relevant original CD. Multiple excerpts from a single CD are distinguished by letters (e.g., 124A, 124B).

2005 Legislative History Appendix, Volume I

2005

2005 Legislative History Appendix, Volume I

<p>February 15, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Ray Shadis, New England Coalition Pl. Ex. 2A</p>	<p>[Track 2 00:07:37] RAY SHADIS: You have, I think, now the opportunity to attempt to secure the best possible practice for dry cask for the people of Vermont, and it is a really unique situation because in any other circumstance you would be foreclosed from having much of anything to say about it because of federal preemption.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:08:53] RAY SHADIS: [T]he federal court told the State of Maine, in essence, you can decide on dust, construction noise, visual effects, but you may not even ask what is in those casks, and should you venture into nuclear safety territory, you know, we will surely come down on you.</p>
<p>February 15, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Ray Shadis, New England Coalition Pl. Ex. 2B</p>	<p>[Track 2 00:28:58] RAY SHADIS: The NRC is – has the attitude that these casks are impervious to just about everything, and there is no issue no matter how they’re deployed. And I have to say that when we negotiated these conditions for Maine, you know, the Maine Yankee, Entergy, NRC eventually approved the plans as they were redrawn, but they would never admit that there was any incremental or necessary boost in safety.</p>
<p>February 15, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Ray Shadis, New England Coalition Pl. Ex. 3A</p>	<p>[Track 1 00:02:03] REPRESENTATIVE LARRABEE: You’ve talked about the inherent dangers – I mean, there are, I’m sure, in – in the – the pool storage of the fuel, but in the – in the “On The Watch” newsletter – in their – in – in one of the – the articles entitled “Entergy’s Three-Prong Plan for Maximizing Profit” in the second point it – it says in the second that in general, from a safety viewpoint, dry cask storage is better than the current spent fuel pool. Could you – could you give me some clarity? Which is really the safer storage scenario?</p> <p>RAY SHADIS: Dry cask overall, in gross, is much safer than a spent fuel pool in a boiling water reactor like the Vermont Yankee where the – the fuel is on the, you know, the level of the fifth floor or sixth floor and it is in a structure that could be penetrated by aircraft or fall apart in earthquake conditions. And, you know, it is much safer in a dry cask.</p>
<p>February 15, 2005 House Natural Resources Committee Hearing on H. 545</p>	<p>[00:13:36] RAY SHADIS: What we’re talking about is the gamma radiation and neutron radiation that goes right through the casks as a beam of energy, if you will. And by the time you put the casks out</p>

2005 Legislative History Appendix, Volume I

<p>Testimony of Raymond Shadis, New England Coalition Pl. Ex. 3B</p>	<p>there, geometrically you've constructed a fairly husky beam or radiation. It's something that with a radiation detector or a gamma camera you can see from offsite, you can see this radiation emanating. And it is small – the additional increase is small, especially by the time you get any distance past, but it is an incremental increase in risk for the people and the environment as it's exposed.</p>
<p>February 15, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Judy Davidson, Nuclear Free Vermont Pl. Ex. 3C</p>	<p>[Track 1 00:45:57] JUDY DAVIDSON: We really urge the Legislature to maintain oversight over dry cask storage. We have very little faith in the Nuclear Regulatory Commission and do not believe that the Nuclear Regulatory Commission is really doing its job to protect the public's health and safety in almost areas of nuclear safety. ***</p> <p>[Track 1 00:47:02] JUDY DAVIDSON: So those of us who live close to the plant are really concerned about some of the safety issues involved with these casks. And even though we know that you, as a Legislature, cannot legislate safety, we do believe that you have a role in which you can be responsive to our concerns in a way that the Nuclear Regulatory Commission is not. ***</p> <p>[Track 1 00:47:29] JUDY DAVIDSON: I would concur with Ray that we in southern Vermont are left with now two safety things to be concerned about, a full spent fuel pool and the risk of a spent fuel pool fire, and now the risks involved in dry cask storage. And these casks are not as safe as everybody would have you believe or at least as far as the nuclear industry would have us believe. ***</p> <p>[Track 1 00:48:22] JUDY DAVIDSON: In 2000 – the year 2000, a man named Oscar Shirani led a quality assurance inspection that found nine major quality assurance violations, leading him to question the structural integrity of these casks. His report, which was commissioned by a group of nuclear reactor utilities, came just months after the Nuclear Regulatory Commission issued a report saying that these casks were perfectly safe, leading many people to doubt the competence of the NRC quality assurance program.</p>
<p>February 15, 2005 House Natural Resources Committee Hearing on</p>	<p>[Track 1 00:52:09] REPRESENTATIVE: The criteria that the Public Service Board uses – I'm sure you're familiar because you were –</p>

2005 Legislative History Appendix, Volume I

<p>H. 545 Testimony of Judy Davidson, Nuclear Free Vermont Pl. Ex. 3D</p>	<p>JUDY DAVIDSON: Right.</p> <p>REPRESENTATIVE: – is that the criteria you suggest that we use with our responsibility for oversight in this?</p> <p>JUDY DAVIDSON: I would suggest that you find a way to include some of the safety concerns in the things – the requirements or the conditions that you place on Vermont Yankee. And I’ve always been confused about – under that Act, 248, that they are required to consider issues of environmental concerns. And it seemed to me that even in terms of the uprate, they could certainly have done – done more. And I would think that you as a committee could look at some of the environmental aspects and put more weight on that as they relate to safety, but maybe name them as environmental.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O’Brien, Department of Public Service Pl. Ex. 5A</p>	<p>[Track 2 00:13:59] COMMISSIONER O’BRIEN: When it came to Vermont Yankee, that was the most significant generating asset that they held, and there was a further belief at the time that the benefit of them selling that plant was that we would remove the risk of ownership of that facility from those companies and also their share – their rate payers and Vermont rate payers.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O’Brien, Department of Public Service Pl. Ex. 5B</p>	<p>[Track 2 00:14:53] COMMISSIONER O’BRIEN: And one of the things that the Public Service Department pushed very hard for in that case was that there be a favorable power supply agreement between Entergy, the new owner, and the Vermont utilities.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545</p>	<p>[Track 2 00:16:23] COMMISSIONER O’BRIEN: [W]e, as a state, I think both in the regulatory realm, and I think in the – here in the Legislature, saw a positive outcome of having this plant sold to an outside company that could come in and operate it and still have the benefit of the power supply flowing to Vermont rate payers at a</p>

2005 Legislative History Appendix, Volume I

<p>Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 5C</p>	<p>favorable price; and the risks of ownership would be – would be borne by this separate party. A very good example of how that has played out is, if you look at the post-September 11th, you know, reality we're living in, in terms of security issues and worries about terrorism and that sort of thing, there's been a lot of things that have had to be done to the plant to prepare for it.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:17:20] COMMISSIONER O'BRIEN: But that was all paid for by Entergy and not by Vermont rate payers.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 5D</p>	<p>[Track 2 00:21:29] COMMISSIONER O'BRIEN: Vermont Yankee produces one-third of Vermont's electrical power. It is a reliable source of electricity. And two significant problem events in the past two years, first the August 14, 2003 blackout that affected millions of people in the middle and Northeast part of the country, and the January 14th to 16th of 2004 cold snap, where we were in a vulnerable state in New England and in northern Vermont, Vermont Yankee was running.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 5E</p>	<p>[Track 2 00:35:59] COMMISSIONER O'BRIEN: Now, in Minnesota, there's a slight difference in that the utility that owned the facility was a fully regulated cost-of-service, rate-of-return regulated utility. In this case, with Entergy, it's an exempt wholesale generator or merchant power supplier. And we do not set their rates and review their, you know, financial results. And that's in the way it was done in Minnesota. So in point of fact, this was, at the end of the day, a rate payer funded program in Minnesota.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O'Brien, Department of Public Service</p>	<p>[Track 2 00:41:03] LEGISLATOR: [Y]ou seem to be saying that the Minnesota rate payers funded the entire fund in Minnesota. And it seems to me, in this instance, it might be exporting some of that cost to other people, in this case [unintelligible].</p> <p>COMMISSIONER O'BRIEN: Um –</p> <p>LEGISLATOR: If there were to be a fee or a tax, as you say.</p>

2005 Legislative History Appendix, Volume I

<p>Pl. Ex. 5F</p>	<p>COMMISSIONER O'BRIEN: – no, I would not characterize it that way.</p> <p>LEGISLATOR: Why not?</p> <p>COMMISSIONER O'BRIEN: Because the – Entergy does not have anywhere to recover these costs. They're a competitive supplier of power in a competitive marketplace.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 5G</p>	<p>[Track 2 00:52:11]</p> <p>LEGISLATOR: I either think or I hope that part of the role of the department is as, our advocate, is to deal with safety. And I haven't heard – I don't think I've heard you speak about the safety issues that may or may not be involved with either uprate or dry cask storage.</p> <p>COMMISSIONER O'BRIEN: Well, I spoke – first of all, you're correct that we are the public advocate when it comes to safety considerations. Oftentimes, that does also have to contend with the jurisdictional issues of where safety is federally preempted here and is under the NRC as opposed to the Public Service Board. And I did mention earlier that we are still engaged at the federal level on some safety considerations related to uprate. We care very much about that. And we can segregate what we see as the benefit to the state of the uprate on a financial, economic basis, power supply basis, and then also have to look at the safety issues. And safety issues trump all the other things. And the same would be with dry cask storage.</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Jay Thayer, Entergy Nuclear Operations, Inc. Pl. Ex. 6A</p>	<p>[Track 1 00:30:17]</p> <p>JAY THAYER: I think you and I have had this conversation before. And I don't mean to be trite, but I haven't spent any time looking into federal preemption. When we came to the State as Entergy, when we worked through the Certificate of Public Good for the sale, we committed at that time, and it's been stated before, that we would continue to use state processes. And it's one of the reasons I'm here before you today. Is we are – we believe in pursuing state processes. And we will pursue the process with the Legislature to hopefully get this turned over to the Public Service Board where we can pursue the process of the Certificate of Public Good, and meet the test of the eleven criteria under Section 248. So it is my – I want to make sure everybody's clear that we intend to pursue state processes.</p>
<p>February 23, 2005 Joint House Natural</p>	<p>[Track 1 00:03:17]</p> <p>RAY SHADIS: And the reason that I want you to see this is</p>

2005 Legislative History Appendix, Volume I

<p>Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Ray Shadis, New England Coalition Pl. Ex. 7A</p>	<p>because dry cask storage, while environmentally it is, in many ways, safer than spent fuel storage, presents some unique risks. And the question that I think we want, as the New England Coalition, wants this committee to answer before going ahead is, is what is proposed by Vermont Yankee the very best that is available in order to protect the environment, the health, and the security of your people? Is this – is this going to be, you know, the upscale blue-ribbon version or is this going to be the cheap, cut corners, take a chance version of dry cask storage?</p>
<p>February 23, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on H. 545 Testimony of Raymond Shadis, New England Coalition Pl. Ex. 7B</p>	<p>[Track 1 00:04:42] RAY SHADIS: Let me add one more thing. This is not my favorite rocket, shoulder-launch missile. My favorite for reasons of inciting horror – LEGISLATOR: You have a collection? RAY SHADIS: -- and terror and fear is a thing called the Milan missile. It was produced by a combo European company, French-German. The French have sold it all over the world. The first edition of it, they sold more than 50,000 to about 16 different countries. And this was the missile that was described in State Department press conferences as being found in the caves of the Taliban in Afghanistan and this is the missile that was found in the safe houses – store houses – in Iraq. It's out there. It's available. The IRA had a few. And it'll punch a grapefruit-size hole in 40 inches of armor plate at a distance of a mile or about five feet of concrete. And again, the weight is only – less than 60 pounds on the Milan. So – given it's provenance with the terrorists, I – that's the horrible example we like to use.</p>
<p>March 23, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative Errecart Pl. Ex. 15A</p>	<p>[Track 2 00:37:41] REPRESENTATIVE ERRECART: I was really surprised to hear you mention that in the 2003 legislative process that you discussed terrorism because I thought that safety was preempted, and terrorism sounds like safety to me.</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Bill Sherman, State Nuclear Engineer Pl. Ex. 24A</p>	<p>[Track 1 00:23:33] REPRESENTATIVE ERRECART: I thought that the federal law had preempted our consideration of safety issues. So why are we talking about – is homeland security considered within the purview of safety? BILL SHERMAN: Homeland security has very definite safety</p>

2005 Legislative History Appendix, Volume I

	<p>implications. However, homeland security is an emerging issue since September 11th and exactly where all of the jurisdictional abilities are, in my view, though I'm not an attorney...</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative Errecart Pl. Ex. 25A</p>	<p>[Track 2 00:02:56] REPRESENTATIVE ERRECART: I've heard different things, that a berm could be adequate to shield the casks from possible rocket launchers, but it just seems to me, as a layperson, that a very thick structure that includes over the top would be safer than a berm.</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545 Statement of the Representative Dostis Pl. Ex. 25B</p>	<p>[Track 2 00:04:11] REPRESENTATIVE DOSTIS: And we're – I mean, we're very cognizant that when it comes to issues of safety, we are preempted by the federal government. A lot of these questions have to do with just the aesthetics of these casks. You know, how will they be viewed by the public, you know, what impact would the presence of these casks have on tourism, for example, a very important economic driver for the State of Vermont.</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative Errecart Pl. Ex. 25C</p>	<p>[Track 2 00:5:55] REPRESENTATIVE ERRECART: Yeah, because obviously I was trying to fit in what NRC was going to require for safety and how that fits into the aesthetics in Vermont.</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative McCullough Pl. Ex. 25D</p>	<p>[Track 2 00:18:29] REPRESENTATIVE MCCULLOUGH: I guess, since I'm sort of – I guess I can – I can't question your – you know, your safety record, and nor would I want to. You guys, I know, are in a [indiscernible] are doing everything that's required – DAVID McELWEE: Thank you. REPRESENTATIVE MCCULLOUGH: – and more for safety. Perception being the reality, with all the press nationwide that this particular kind of problem is getting, it could have a major impact on Vermont's economy.</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545</p>	<p>[Track 2 00:20:01] REPRESENTATIVE DARROW: What radiation dose would a person who was off site receive from an accidental release of radioactivity during an accidental release?</p>

2005 Legislative History Appendix, Volume I

<p>Testimony of David McElwee, Entergy Nuclear Vermont Yankee Pl. Ex. 25E</p>	<p>DAVID McELWEE: Are you talking from dry-fuel storage? REPRESENTATIVE DARROW: Yeah.</p>
<p>April 7, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of John Hollar, lobbyist, Entergy Nuclear Vermont Yankee Pl. Ex. 25F</p>	<p>[Track 2 00:40:51] JOHN HOLLAR: For the record, John Hollar. We're being asked to agree, I think, not to seek preemption for some future unspecified condition that the Legislature might place, and I don't think that's going to be something we will be able to respond to. If there's a particular proposal or a condition that we're asked to accept, we'll give you a response in as open and honest way as we can. We've submitted to the committee a proposal for approval; it's, I think, pretty clear. And we understand that the committee's considering that and may have other alternative proposals for us to evaluate, and we'll do that and give a response. But I think what we can't do is say – is give a blanket assurance that we won't oppose certain conditions that some – that either individuals or the Legislature might – may impose on the request.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Maya Zelkin Pl. Ex. 27A</p>	<p>[Track 3 00:06:49] MAYA ZELKIN: Please deny Entergy's request to use dry cask storage, which will create only a bigger mess and a bigger safety threat to Vermont for Vermont to deal with.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Melinda Vasino Pl. Ex. 27B</p>	<p>[Track 3 00:12:26] MELINDA VASINO: And I am, and have been for a long time, in support of dry cask storage as what I feel – and I'm not a scientist – just from everything that I've studied, it seems to me that it is the safer option than any of the others.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of William Sayer Pl. Ex. 27C</p>	<p>[Track 3 00:25:59] WILLIAM SAYER: In my view, the plant is safe. This kind of technology is used in France and in Japan. There's 24 other sites in America that have dry cask storage, some of them in highly populated metropolitan areas, and if safety were a question, that precedent would not have been established.</p>

2005 Legislative History Appendix, Volume I

<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Paul Wusket Pl. Ex. 27D</p>	<p>[Track 3 00:27:22] PAUL WUSKET: In the name of cheap electricity, we've created a monster. Today, we have the chance to start dismantling this monster and look for safer ways to live our lives.</p> <p style="text-align: center;">***</p> <p>[Track 3 00:27:41] PAUL WUSKET: We now know the extreme danger we are in. We can no longer hide the fact that the terrorists know it, too.</p> <p style="text-align: center;">***</p> <p>[Track 3 00:28:02] PAUL WUSKET: In the meantime, we hold our breath, and we pray that our leaders will at least start the process needed to secure our safety and the safety of future generations.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Peter Alexander, New England Coalition Pl. Ex. 27E</p>	<p>[Track 3 00:31:29] PETER ALEXANDER: [I]f you're living in St. Albans or Londonderry, you're not safe any more than the people living in Windham County are safe. We have the sirens, but radiation pays no attention to sirens or boundaries. If there's an accident down there, all of New England is at risk.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Bill McKim Pl. Ex. 27F</p>	<p>[Track 3 00:32:47] BILL MCKIM: [O]n the safety side of things, the State of Vermont has dropped the ball in terms of requiring the independent safety assessment, which many, many people have signed petitions to require. So I'd just like to bring that up and have that, again, on the floor that we would like to see an independent safety assessment because the engineering assessment only covered about a tenth of what we really need to.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Nicholas Neto Pl. Ex. 27G</p>	<p>[Track 3 00:49:52] NICHOLAS NETO: [Q]uality of life means a lot more than how much money you make is. We need to consider our health, we need to consider – we need to consider the health of our families and our neighborhood and communities long after we're gone.</p> <p style="text-align: center;">***</p> <p>[Track 3 00:50:35] NICHOLAS NETO: I don't think that it is possible for anybody to see that at this point, that nuclear waste cannot be – can be safe.</p>

2005 Legislative History Appendix, Volume I

<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Amy Schoellenberger Pl. Ex. 27H</p>	<p>[Track 3 01:01:43] AMY SCHOELLENBERGER: Spent nuclear fuel is the most toxic substance on earth. It remains radioactive for hundreds and thousands of years. It can catch on fire. A fire in the fuel pool at Yankee would devastate an area the size of Vermont, New Hampshire, and Massachusetts forever. You should not make this decision on Entergy’s schedule. You should consider our safety, our needs, and our future.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Dexter Landers Pl. Ex. 28A</p>	<p>[Track 1 00:01:54] DEXTER LAUDERS: It’s imperative that we keep this facility running. Safety is, of course, a major issue for all of us, and this is one of the safest nuclear plants in the United States.</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Indra Tracy Pl. Ex. 28B</p>	<p>[TRACK 1 00:04:18] INDRA TRACY: The issue of safety should address the entire public, and it really concerns me that the safety assessment done this far on the Yankee plant was not performed by an independent company because what’s to prevent from biased reporting?</p>
<p>April 7, 2005 Joint House and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Andrew Olson Pl. Ex. 28C</p>	<p>[Track 1 00:16:00] ANDREW OLSON: And while I have no memory of Three Mile Island, I met a lot of people who did. And the fact of the matter is, they still don’t really know how much radiation was released. They still don’t know what the long-term effects are. *** [Track 1 00:16:26] ANDREW OLSON: The other thing that I do have memories of are the helicopter pilots that were fighting to contain the radiation release of Chernobyl.</p>
<p>April 12, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project</p>	<p>[Track 2 00:05:17] RICHARD COWART: [T]he truth of the matter is, this is an important issue and you have to understand what the scope of state authority is. And what the scope of federal authority is. *** [Track 2 00:06:27] RICHARD COWART: I’m going to give you a suggested answer</p>

2005 Legislative History Appendix, Volume I

<p>Pl. Ex. 30A</p>	<p>to question number one, what’s the legislative purpose? And this is something that, of course, as someone who’s just, you know, here to assist you, this is just a suggestion for you to discuss.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:07:26] RICHARD COWART: That’s really the issue here – the future. Will need someday to be replaced by sources that are diverse, reliable, economically sound, and environmentally sustainable. We know that ultimately, without even knowing the dates, that’s what Vermont is going to need. Vermont needs to plan for that future and we need to start making investments as soon as possible in transitioning towards a power supply that is diverse, economically, and environmentally sound. And if the leg – if you agree with those propositions and conclude that the legislative purpose for addressing the storage question is to answer the question: “How can we create a pool of investment dollars that helps us to accelerate the transition to a more diverse, reliable, sound energy mix?” Just think about Vermont’s energy future as the goal here.</p>
<p>April 12, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 31A</p>	<p>[Track 1 00:09:00] REPRESENTATIVE: I guess I’ve been convinced, and maybe some people in this room haven’t, but I guess we’ve heard that, you know, wet storage versus dry cask, dry cask is a very much more responsible way to store the spent fuel, so, therefore, in my mind it’s a safety issue. What justifications could we use to tax or charge a fee for a safety improvement at a facility? I mean, I’m just – I’m having a hard time with that. I’m not going to last –</p> <p>RICHARD COWART: Right. Well, in fact, that’s what I was suggesting a minute ago, that I don’t think you want to address this from the point of view of safety at all. That isn’t the purview of this body. And that’s why I’m – that’s why I’m sitting here pointing out that the real issue, and the issue upon which I think you should be focusing your attention, is the future power supply portfolio of the State of Vermont, and, for that reason, once you take – once you take that approach to the situation you can make – in assessing the fee – you can make a variety of judgment calls.</p>
<p>April 13, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Commissioner David</p>	<p>[Track 1 00:18:34] COMMISSIONER O’BRIEN: We supported the uprate based on the settlement we reached but we always reserved a right to look at safety and we’ve done that. If our safety answers... issues are resolved, you know, we can be comfortable with the uprate. You know, you don’t... you don’t bargain with safety and you know, it</p>

2005 Legislative History Appendix, Volume I

<p>O'Brien, Department of Public Service Pl. Ex. 38A</p>	<p>actually reminds me to be careful when you look at things like our uprate settlement or taxing dry cask that, you know, if you're uncomfortable with nuclear power, you know, taxing it isn't going to make it safer. It doesn't change that dynamic.</p>
<p>April 14, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Bill Sherman, State Nuclear Engineer Pl. Ex. 43A</p>	<p>[Track 1 00:25:28] BILL SHERMAN: Also, even though there is no contract after 2012, the power purpose agreement ends in 2012, it's probably an expectation that were power uprate approved by the Public Service Board – I'm sorry were license renewal approved by the Public Service Board – the – Entergy Nuclear Vermont Yankee would have to demonstrate a significant benefit to the State of Vermont. That's one of the requirements in title 30. And that benefit might include the requirement to provide Vermont a favorable contract, a favorable purchase price.</p>
<p>April 14, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Magadeline Volaitis Pl. Ex. 45A</p>	<p>[Track 1 01:03:29] MAGADELINE VOLAITIS: The type of casks chosen should also be a matter of legislative input based on technical expertise presented on all the available choices and the selection made based on safety and not who can give Entergy the best deal.</p>
<p>April 14, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Sally Wise Pl. Ex. 46A</p>	<p>[Track 1 00:14:18] SALLY WISE: I really acknowledge in this room that everybody – I'm sure everybody at that plant, everyone that's designed anything, any place really thinks of safety as uppermost. I do not doubt this.</p>
<p>April 14, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Howard Fairman Pl. Ex. 46B</p>	<p>[Track 1 00:28:25] HOWARD FAIRMAN: If you fail to authorize quickly ample dry cask storage at Yankee not as a new source of tax revenue, but as the safest alternative for the foreseeable future, you will have neglected your responsibility for our safety from both accidents and terrorism. Thank you.</p>

2005 Legislative History Appendix, Volume I

<p>April 14, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Alicia Moyer Pl. Ex. 46C</p>	<p>[Track 1 00:45:40] ALICIA MOYER: I would ask that after this issue has been addressed, that you insist on an independent safety assessment. Nobody has been able to make me understand why this is not an option.</p>
<p>April 14, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Deb Katz Pl. Ex. 46D</p>	<p>[Track 1 00:56:27] DEB KATZ: I have material here for the committee, which includes the National Academy of Science executive study and a map, which gives the sense of what would happen if there was a terrorist attack on Vermont Yankee.</p>
<p>April 14, 2005 Joint House Natural Resources and Senate Natural Resources Committee Hearing on Dry Cask Storage Testimony of Judy Davidson, Nuclear Free Vermont Pl. Ex. 47A</p>	<p>[Track 1 00:10:45] JUDY DAVIDSON: My name is Judy Davidson, and I've lived in Dummerston for 33 years. Although I know that you as a legislature do not have jurisdiction over safety, the fact is, is that you do have jurisdiction over our health, economic issues, the environment. And safety and all these issues are directly correlated when it comes to nuclear power.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:13:45] JUDY DAVIDSON: I ask you to consider that in having statutory authority over radioactive storage, you may also have the responsibility and the opportunity to address the catastrophic consequences to our health, environment, and economy from a spent fuel pool fire.</p>
<p>April 18, 2005 House Natural Resources Committee Hearing on H. 545 Pl. Ex. 50A</p>	<p>[Track 1 00:17:21] REPRESENTATIVE 1: There's a question I have, too, about the type that I'm not going to be able to feel good unless I know more about the Holtec 100. I don't know what to do about that but...</p> <p>REPRESENTATIVE 2: We charge the Public Service Board to...make the determination.</p> <p>REPRESENTATIVE 1: As long as we somehow get that in here...</p>

2005 Legislative History Appendix, Volume I

	<p>REPRESENTATIVE : To make what determination?</p> <p>[OVERLAPPING] [0:17:40.4]</p> <p>REPRESENTATIVE ERRECART: Yeah, but we can't say that, anything about safety. It can only be about economics and aesthetics.</p> <p>REPRESENTATIVE 1: Well, okay, I'm not thinking safety. I'm just thinking definitely economics because if whatever happens there, it has a profound economic effect.</p> <p>REPRESENTATIVE ERRECART: On that county?</p> <p>REPRESENTATIVE 1: Yeah.</p>
<p>April 19, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 57A</p>	<p>[Track 1 00:28:19]</p> <p>RICHARD COWART: The problem that we're dealing with here is that a lot of the concerns that citizens have are concerns that you can't address directly the way they want them to be addressed.</p>
<p>April 19, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 57B</p>	<p>[Track 1 00:40:03]</p> <p>REPRESENTATIVE: But with regard to Minnesota in particular when it decided to assess a dry cask storage charge, did they have particular justifications?</p> <p>RICHARD COWART: Yeah, they were particularly concerned about accelerating the deployment of renewable resources.</p> <p>REPRESENTATIVE: And they felt that it was the responsibility of the nuclear facilities to fund that?</p> <p>RICHARD COWART: They – this is a very unique circumstance in Minnesota. They assessed this responsibility on one particular nuclear facility that, at the time, was also rate regulated. So then this cuts both ways, by the way, but at the time that company was rate regulated and it was understood that the fee would end up being collected back in rates. So they weren't assessing the fee on the shareholders of the nuclear facility, if you want to view it that way. I mean, at this point it's worth noting that Vermont Yankee, because it's an independent power producer, is a different kettle of fish.</p>

2005 Legislative History Appendix, Volume I

<p>April 19, 2005 House Ways and Means Hearing on H. 545 Pl. Ex. 58A</p>	<p>[Track 1 00:04:39] REPRESENTATIVE 1: If the federal government owns it, the spent fuel rods, and Entergy closes, whether it's 212 or 225 or 292 [sic]. If it closes, and walks away and the government says, we don't have the money and we're not going to send anybody in there, who's going to protect that? Who's going to mend the fences? Who's going to look at the fuels? Who's going to monitor it? Who's going to see that nobody goes in and steals them?</p> <p>REPRESENTATIVE 2: Right.</p> <p>REPRESENTATIVE 1: This is one of my big problems and why I want some money from somebody that if the federal government or Entergy doesn't protect it, we're going to have to do it because we are not going to let our citizens blow – it wouldn't blow up. It would burn and then the stuff would float around and come down.</p> <p>REPRESENTATIVE 3: Thank you for the graphic. [Laugh]</p>
<p>April 21, 2005 House Natural Resources Committee Hearing on H. 545 Pl. Ex. 61A</p>	<p>[Track 1 00:41:56] REPRESENTATIVE: Al, it's my understanding that every time you handle this stuff, it's risk – it's high risk. So the idea in here of sort of casually saying well, we can just move it – that's huge.</p>
<p>April 27, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 65A</p>	<p>[Track 1 00:00:40] REPRESENTATIVE 1: One question. So, to go back to berms – which is one of the things that we had mentioned – so this one comes at a question of creative use of statute. I guess something – someone might have a safety issue in mind, but – their want to shield the physical impact – the visible impact of these casks from the river or something?</p> <p>SARAH HOFMANN: Certainly talking about aesthetics in terms of berms would be extre – it would be totally acceptable. And – and –</p> <p>REPRESENTATIVE 1: Totally acceptable, okay.</p> <p>SARAH HOFMANN – at the – at the Public Service Board.</p> <p>REPRESENTATIVE 1: Yeah.</p> <p>SARAH HOFMANN: I mean any kind of aesthetic issue can</p>

2005 Legislative History Appendix, Volume I

	<p>come before the Board –</p> <p>REPRESENTATIVE 1: Yeah.</p> <p>SARAH HOFMANN: – under the 248 criteria.</p> <p>REPRESENTATIVE 1: Okay.</p> <p>REPRESENTATIVE 2: I mean, berms are ugly. [Laughter.]</p> <p>REPRESENTATIVE 1: But you could plant them.</p> <p>SARAH HOFMANN: That’s right.</p> <p>REPRESENTATIVE 3: Steve?</p> <p>REPRESENTATIVE DARROW: Could you update us on the radi – if the excess radiation limit to the perimeters – and might put the uprate and dry cask might – you have to require berms?</p> <p>SARAH HOFMANN: Yes – yes, I ca – I ...</p> <p>REPRESENTATIVE DARROW: Which may be required to keep the radiation levels down?</p> <p>SARAH HOFMANN: I can update you, which is that basically, the investigation with the Health Department and the Department of Public Service is ongoing. But Entergy has made a firm commitment under oath that should the uprate cause it to exceed the 20 milligram state standard that they will either shield the source or decrease the output from the plant. And so shielding the source – one possible shield method is use of earth and berms.</p>
<p>April 26, 2005 House Natural Resources Committee Hearing on H. 545 Pl. Ex. 66A</p>	<p>[Track 1 00:06:16] REPRESENTATIVE: I just – I got to reiterate, again, I think this waste is here whether we approve this dry cask or not and to me, even though we’re not supposed to concern ourselves with safety or we get preempted, I think we’ve heard, at least in my mind, conclusively that the dry cask is a better alternate than the wet pool.</p>
<p>April 26, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Kenneth</p>	<p>[Track 2 00:01:55] KENNETH THEOBALDS: [W]e derive no economic benefit from the proposals. So the idea that we should pay some penalty or make some additional contribution based on the fact that in order to honor the current license and the tending of PPAs, that we</p>

2005 Legislative History Appendix, Volume I

<p>Theobalds, Entergy Nuclear Vermont Yankee Pl. Ex. 66B</p>	<p>need dry cask storage, we don't see it that way.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:02:58] KENNETH THEOBALDS: But where we do object is to be singled out to attempt to balance a portfolio for the future as the sole generator responsible for funding that development.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:25:17] KENNETH THEOBALDS: Policy for the state cannot be made on my back. It's just not – it's not fair. It's not appropriate, in my opinion. I believe there is opportunity for people of good will to use this as an opportunity and an opportunity that is a result of a few, I would say, fortunate turn of events for the State because, one, if your utilities still owned the plant we wouldn't be having this conversation.</p>
<p>April 26, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 66C</p>	<p>[Track 2 00:45:01] COMMISSIONER O'BRIEN: [T]he benefit of selling the facility was that there was – we thought there would be cost savings by the Vermont utilities that they wouldn't have – bear these costs of doing business and wouldn't face the uncertainties of decommissioning.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:45:31] COMMISSIONER O'BRIEN: So the track record on having decommissioning go according to schedule and plan is not good and there's a variety of reasons for that, I'm sure. But the risk of that is now not with our rate payers but with the private company.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:46:16] COMMISSIONER O'BRIEN: And I know you've heard testimony on this, but it is not a small thing that since the time that Entergy acquired the plant we've gone through all of the things of adjusting to a post-9/11 world and they've spent considerable amounts of money on the facility to deal with security, and it's significant.</p>
<p>April 26, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Commissioner David</p>	<p>[Track 1 00:14:44] COMMISSIONER O'BRIEN: And I'm not presuming – and I want to be careful – I'm not – I'm not here to play the scare tactics sort of thing, the lights are going to go out. I want to be very clear about that. I'm just saying that I know what the downside risk is and I know that the company's business case doesn't get better by</p>

2005 Legislative History Appendix, Volume I

<p>O'Brien, Department of Public Service Pl. Ex. 67A</p>	<p>having to (a) spend money on dry cask, (b) deal with security issues, and (c) potentially pay a charge in order to store the casks in Vermont. And I know how unhappy the company already is with us from a regulatory standpoint. We haven't made their lives easy in terms of the NRC process. And that's okay. I accept that, and they're going to have to live with that reality because we're not happy on safety; that's just the way it is. I'm not seeing the wisdom of pushing the envelope on this partic- in this particular instance, especially recognizing not just the benefit of the power to our ratepayers, how important this power supply is in the jobs, but recognizing that, in fact, dry cask might be something we want, from a safety standpoint.</p>
<p>April 26, 2005 House Natural Resources Committee Hearing on H. 545 Continued Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 67B</p>	<p>[Track 1 00:20:38] COMMISSIONER O'BRIEN: Third, I'm wondering, Representative Dostis, if, in fact, there is that sort of concern about storing nuclear waste, and then for how long, I'm curious, how does a tax solve that problem? How does that – if you're concerned about the safety of something, if you're uncomfortable with – you know, one of the things I thought long and hard about in an uprate settlement is, if you're uncomfortable with something, a financial settlement is not going to make you feel better about it, or at least it shouldn't.</p>
<p>April 26, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 67C</p>	<p>[Track 1 00:56:40] RICHARD COWART: Obviously, and from – you've been told this many times – that Entergy bought this plant with the expectation, the business expectation, that the license would be extended.</p>
<p>May 17, 2005 House Natural Resources Committee Hearing on H. 545 Pl. Ex. 70A</p>	<p>[Track 2 00:04:48] REPRESENTATIVE: You know, when you compare it to fossil fuel where the pollution is released all the time, so yes, it's released over a large time span, and it's dispersed, largely out of state. Here, we're talking about all of the waste has been concentrated for over 30 years and stored concentrated in one spot. And we don't know when that is going to hit. The problem is if it ever is dispersed to – if it ever is let loose. We're living with that risk, with that danger.</p>
<p>May 17, 2005 House Natural Resources Committee Hearing on</p>	<p>[Track 2 00:30:55] REPRESENTATIVE ERRECART: I don't have criticism of the Public Service Department in terms of advocating for cheap,</p>

2005 Legislative History Appendix, Volume I

<p>H. 545 Statement of Senator Errecart Pl. Ex. 70B</p>	<p>reliable power. However, I feel strongly that the public interest is much broader than that.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:31:22] REPRESENTATIVE ERRECART: [W]e believe that the Public Service Department has inadvo – inadequately advocated for the other components of the public interest, like health, safety, and the environment.</p>
<p>May 17, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Representative Errecart Pl. Ex. 70C</p>	<p>[Track 2 00:33:51] REPRESENTATIVE ERRECART: Mr. Sherman, this is the problem with the Northwest Reliability Project is not a problem of Shelburne not getting what it wants. It’s a problem with the Public Service Department advocating against evidence relating to the public health, safety, and the environment and with the Public Service Department treating knowledgeable and experienced Shelburne witnesses badly. So I need to make sure that that’s not going to happen in the Vermont Yankee context.</p>
<p>May 18, 2005 House Ways and Means Committee Hearing on H. 545 Pl. Ex. 80A</p>	<p>[Track 1 00:55:14] REPRESENTATIVE: But they are making a profit and then they are going to store highly radioactive material on Vermont property. That is a risk to us. So, I mean, I just simply am saying that the math works out for our benefit with the charge and it really bothers me that a private company is going to be able to have an uprate, which was questionable a year ago and there were issues of safety around that, but that appears to be going to happen, and so why wouldn’t we charge them for at least making money and planting again dangerous material on our soil?</p>
<p>May 18, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Kenneth Theobalds, Entergy Nuclear Vermont Yankee Pl. Ex. 81A</p>	<p>[Track 1 41:26] KENNETH THEOBALDS: So, again, I pointed out in the interest of sort of fairness and equity that these are important public policy considerations, but they can’t be balanced on the back of one generating station. It’s not fair. It’s not equitable. It’s not, uh, reasonable to expect.</p> <p>Much has been made about economic ability to, ability to pay. The fact is we’re not a regulated utility. We’re a merchant generator. We assume all the financial risk.</p>
<p>May 18, 2005 House Ways and Means Committee Hearing on H. 545</p>	<p>[Track 1 00:06:24] PETER ALEXANDER: New England Coalition actually prefers dry cask facility. It’s a safer or, less dangerous I should say, option. However, what we’re being offered is actually the worst</p>

2005 Legislative History Appendix, Volume I

<p>Testimony of Peter Alexander, New England Coalition Pl. Ex. 82A</p>	<p>of both worlds, we're going to end up with full spent fuel pool and a big array of casks. So we'd like to see an incentive of some kind that as much fuel gets out of the spent fuel pool and into dry cask as possible to reduce the dangers that were outlined in a recent NAS, the National Academy of Sciences study, that got published a few weeks ago. It was in the front pages of many newspapers. So you may have read about it.</p>
<p>May 18, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Peter Alexander, New England Coalition Pl. Ex. 82B</p>	<p>[Track 1 00:08:18] PETER ALEXANDER: First time I saw it I thought our electric bills were going to go up. It's very confusing language but leave it to the NRC to come up with terms like that. They're very good at obfuscating. Anyway, I don't think Entergy has a sound argument that they should absolutely not be taxed or charged a fee or somehow pay for the privilege of storing this nuclear waste, which is the deadliest toxin known to mankind that will remain deadly for up to hundreds of thousands of years and must be isolated from the living environment. We don't know how good these casks are. They've been in use. The ones that they're planning to use have not been around that long. The dry cask concept has only been around for 19 years. It's not a tried and true technology. So the State of Vermont assumes significant risk in having these things put out there, not knowing if the Department of Energy will take them, if and when. If and when they're going to corrode and start leaking, some of the casks have had problems in the past. So it's not a rosy picture as much as they would like to give you the assurance that it's a rosy picture. The State has significant risks and it's not just the people in Windham county. If you go on the National Oceanic and Aeronautic Administration website, you can actually program what would happen in the event of a radiation release at Vermont Yankee on a particular day and you can track where the radiation would go over a 24-hour period and we've done hundreds of these things and, of course, depends on the severity of the release and so forth. But there's no place in Vermont or New England or even Eastern Canada that would be safe in the event of a severe accident. So, this is not something to be taken lightly.</p>
<p>May 19, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative Errecart Pl. Ex. 85A</p>	<p>[Track 3 00:02:55] REPRESENTATIVE ERRECART: Yeah, because I'm real concerned about the preemption issues. I'm really worried about us endangering this entire bill with more stuff that's, I'm afraid, is preempted.</p>

2005 Legislative History Appendix, Volume I

<p>May 19, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative Dostis Pl. Ex. 85B</p>	<p>[Track 4 00:03:23] REPRESENTATIVE DOSTIS: So one of the first things that struck me, is – aside from the complexity of it – is we’re pretty careful in writing this in a way that would minimize the conversation around safety. And adding this, and then making a new paragraph out of it, does that, in any way, add to the other side?</p>
<p>May 20, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Brian Cosgrove, Entergy Nuclear Vermont Yankee Pl. Ex. 90A</p>	<p>[Track 2 00:39:58] BRIAN COSGROVE: In our opinion, it’s a unilateral retreat from the agreements we negotiated in good faith with the State in 2002. Therefore, we respectfully ask that your committee reconsider the appropriateness of this unfair financial penalty on Vermont Yankee in order to ensure the State’s future financial viability. Sincerely, Gary Taylor.</p>
<p>May 20, 2005 House Ways and Means Committee Hearing on H. 545 Testimony of Gerry Morris, lobbyist, Entergy Nuclear Vermont Yankee Pl. Ex. 90B</p>	<p>[Track 2 00:43:16] GERRY MORRIS: When we bought the plant we understood we had to get a Certificate of Public Good under section 248 before the Public Service Board and not permission from the Legislature; that was – just wasn’t in the cards. It was only when that one little word was discovered, which I think was – what year is this, 2005? I think it was 2003. Then it became a whole new ballgame. So we always knew and we volunteered in the contract to get a Certificate of Public Good, which takes more than a year as you know before the Board. But the Legislature, legislative role was never entertained by anybody, including previous owners.</p>
<p>May 24, 2005 House Ways and Means Hearing on H. 545 Testimony of Brian Cosgrove, Entergy Nuclear Vermont Yankee Pl. Ex. 95A</p>	<p>[Track 1 00:08:54] BRIAN COSGROVE: Their reading of it was that the exemption that was granted to Vermont Yankee was granted because of the fact that it was aimed at a big DOE waste site, not at an operating nuclear power plant. And their interpretation was that that exemption would accrue to the new owners after the plant was sold. The only countervailing opinion to that reading of the law, which we, by the way, believe is still valid, was an opinion by the Attorney General’s office about a year ago when this first really popped out into the middle of the debate and they did a very literal reading of the law and says... it says here corporation, therefore, we’re going to interpret that to mean corporation of.... We, Entergy still very strongly hold the belief that that is not a proper interpretation of the law and that, in fact, we believe that if this were tested, that we could prevail.</p>

2005 Legislative History Appendix, Volume I

<p>May 27, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 100A</p>	<p>[Track 4 00:02:18] SARAH HOFMANN: Economics is a pretty big category.</p> <p>REPRESENTATIVE EDWARDS: I just want to make sure that everyone knows that.</p> <p>SARAH HOFMANN: If it was a pure safety issue, a pure safety issue –</p> <p>REPRESENTATIVE EDWARDS: Yeah.</p> <p>SARAH HOFMANN: – that we couldn’t figure out a way to tie it back to something in that economic/environmental – and, you know, I went through with you –</p> <p>REPRESENTATIVE EDWARDS: You did.</p> <p>SARAH HOFMANN: – early on in the daily list –</p> <p>REPRESENTATIVE EDWARDS: You did.</p> <p>SARAH HOFMANN: – of how you could – you can make arguments, that berms, yes, they maybe have a safety component, but there’s also an aesthetic component. So you could say berms are fair game.</p> <p>REPRESENTATIVE EDWARDS: Okay, it’s suddenly clear.</p>
<p>May 27, 2005 House Natural Resources Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 101A</p>	<p>[Track 1 00:08:53] SARAH HOFMANN: I think we have the same interest. We would like to have the pool itself be as safe as it could be with the fuel in it. And it is about density but it’s also about place – I understand your semantic argument but it’s –</p> <p>REPRESENTATIVE EDWARDS: Well –</p> <p>SARAH HOFMANN: – it’s about placement of – what’s the safest way to have that fuel in the pool. I don’t know what else to say.</p> <p>REPRESENTATIVE EDWARDS: The safest is to have it out of the pool, you know.</p> <p>SARAH HOFMANN: Well, we’d like to encourage that.</p>

2005 Legislative History Appendix, Volume I

	<p>CHAIRPERSON: Joyce and then Steve, because I think –</p> <p>REPRESENTATIVE ERRECART: I mean, this – I think this is only about semantics. And the way I looked at it, I thought that this is relating to the density of the more recent – the hotter material, that we want the hotter material to be less dense, with the checkerboard. So with that respect, this does relate to density.</p> <p>SARAH HOFMANN: That is a good analysis, because that’s what we were trying to get to is a safer fuel pool, at least until the NRC does act on the National Academy of Science. We don’t know – we can’t tell you right now that we, as a State, know what the optimal density of that fuel pool is. We do know, based on science and the National Academy of Science study, that we want the high density surrounded by low density.</p>
<p>May 27, 2005 House Natural Resources Committee Hearing on H. 545 Statement of Representative Darrow Pl. Ex. 101B</p>	<p>[Track 2 00:16:29] REPRESENTATIVE DARROW: Well, I feel we passed a really good bill out of this committee, this 545. But instead of going through the rest of the legislative process, it went into closed-door negotiations, you know, just what Entergy prefers. And first it was negotiating with three members of this committee, which I was ready to go along with but had some reservations about it, but final negotiations were directly with leadership, who hadn’t heard the testimony that we’ve heard. And what we got back as strike-all language has been emasculated and – well, first of all, the findings have been emasculated and sanitized. Look at the difference between what we had in the original bill and what we have now. No mention of high-level nuclear waste. No mention of the fact that it lasts, it’s dangerous for 100,000 years. No mention of the fact that it’s likely to be here for the foreseeable future.</p>
<p>June 1, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 103A</p>	<p>[Track 1 00:43:10] RICHARD COWART: We had leverage to negotiate that arrangement because regulatory approval was required for the transaction. And I think that’s sort of an obvious observation but, in the absence of that regulatory approval, it’s anybody’s guess what terms the Vermont utilities would have been able to reach with Entergy.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:45:05] RICHARD COWART: So the leverage that would exist in the future for the Vermont utilities to exercise a favorable contract exists because of the PSB review and the General Assembly’s</p>

2005 Legislative History Appendix, Volume I

	<p>review. Otherwise, I think Vermont utilities are just like any other buyer and they're just – they're negotiating with Entergy on equal terms with every other utility in the region, every other buyer in the region.</p>
<p>June 1, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Al Boright, Legislative Council Pl. Ex. 105A</p>	<p>[Track 3 00:01:55] AL BORIGHT: [T]here was a laundry list that was initially mentioned in the laundry list of perhaps cask-related issues that were alluded to in the complete bill and are – are now covered by the MOU.</p>
<p>June 1, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 105B</p>	<p>[Track 4 00:24:26] RICHARD COWART: [A]nother important point for you to understand, the power output of Vermont – this plant owned by Entergy, is what's called an exempt wholesale generator. It is not rate regulated by the State of Vermont and it is not rate regulated by FERC. It's important for you to understand this. This is a merchant plant operating as a business like other businesses. We tend to think of these things as, well, it's a power plant so we have a way that we think about power plants that comes from our traditions of utility control but Vermont's utilities who used to own and control 55 percent of the plant don't anymore. And that was sold to Entergy operating as an exempt wholesale generator. So, in some of the normal means that historically Vermont had a pretty good handle on what happened to Vermont Yankee because we regulated the utilities that owned a majority of the plant and we also rate regulated those utilities. That's just no longer the case.</p>
<p>June 1, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 105C</p>	<p>[Track 4 00:28:31] RICHARD COWART: After 2012, by the way, all bets are off. We have no contract after 2012 which is the decommissioning – the planned decommissioning date. And the plant's either going to shut down, in which case we lose the power, or it's going to be relicensed, in which case we have to renegotiate in tougher market conditions. Or we choose not to buy from them and buy from somewhere else but again in generally tougher market conditions.</p>
<p>June 1, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory</p>	<p>[Track 1 00:01:28] RICHARD COWART: Now, it's important, in fairness to Entergy, to point out that they did that because, first of all, they thought that it was a fair rate – they weren't selling power below cost. But they also expected, as a matter of the profitability of the plant, that they would be able to pursue an uprate and that, if the</p>

2005 Legislative History Appendix, Volume I

<p>Assistance Project Pl. Ex. 106A</p>	<p>plant continued to operate well until 2012, they could perhaps relicense it and, after 2012, they'd be able to go to market on all their power output.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Arnie Gundersen, Fairewinds Associates Pl. Ex. 109A</p>	<p>[Track 1 00:46:03] ARNIE GUNDERSEN: I guess the other two things I'd like to mention is that dry casks are safer than the fuel pool, there's no doubt about it, but that assumes that the fuel pool is empty.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:46:42] ARNIE GUNDERSEN: And, I, by moving old fuel out into the yard, only to put more new fuel into the fuel pool, we haven't made the plant any safer, in fact we still have the big target, which is the fuel pool, and now we've got six additional targets in the, uh, in the yard.</p> <p>SENATOR CUMMINGS: Targets of what? You're talking about targets. What are they targets of?</p> <p>ARNIE GUNDERSEN: Well, you know, it's hard. I guess my biggest concern, I'm a proponent of dry cask storage compared to fuel pools. However, both can be attacked with, there's a, there's a 50-caliber rifle on the market. You can buy it on the internet.</p> <p>SENATOR CUMMINGS: Okay, so you're looking for, you're talking about they would be targets for a terrorist attack.</p> <p>ARNIE GUNDERSEN: Yes, yes.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Arnie Gundersen, Fairewinds Associates Pl. Ex. 109B</p>	<p>[Track 1 00:48:21] ARNIE GUNDERSEN: To me it's really not about the three million or two million or whatever. It's about what makes a plant safer.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Commissioner O'Brien, Department of Public Service Pl. Ex. 110A</p>	<p>[Track 1 00:09:28] COMMISSIONER O'BRIEN: [T]he sale of this facility to Entergy was something that was a desired outcome by policymakers and regulators in Vermont at the time that the transaction occurred. And so it allowed us to remove a significant amount of risk from the ratepayers. And now, we're largely in a position of benefitting from the upside, which is a fixed-price contract but not having to deal with issues such as security</p>

2005 Legislative History Appendix, Volume I

	<p>modifications post-September 11th, etcetera.</p> <p>SENATOR: Not having what?</p> <p>COMMISSIONER O'BRIEN: Having to pay for the costs of security modifications at the facility post-September 11th.</p> <p>SENATOR: You meant the State not having to pay, when you say –</p> <p>COMMISSIONER O'BRIEN: The ratepayers. Those are costs that would have showed up in rates to retail customers if CV and GMP still owned the plant. But the fact that this is now a merchant plant whose costs are really borne by the private owner and not by the rate base, those downside risks – those incremental costs that they may see due to unforeseen circumstances, that's carried by the company's – that's at the company's burden not the ratepayer.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 110B</p>	<p>[Track 1 00:45:38] SARAH HOFMANN: Sarah Hofmann from the Department of Public Service.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:45:41] SARAH HOFMANN: I was on the team that negotiated the Memorandum of Understanding on the conditions list.</p> <p>SENATOR AYER: Ah. Okay. My question, Ms. Hofmann, is as advocate for the public, how you advocated for the public safety in this document and what you intend to do to follow that process through as we go through the certificate of –</p> <p>SARAH HOFMANN: Certificate of Public Good.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 110C</p>	<p>[Track 1 00:47:52] SARAH HOFMANN: As you all know, the federal government takes jurisdiction over any radiological safety and health. And so anything that touched on that, it's better to have in an agreed upon MOU than to have in the bill itself. So, I believe that that was a benefit to the State of Vermont. And we did that at the request of House Natural Resources.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545</p>	<p>[Track 1 00:51:08] SENATOR MACDONALD: If the Legislature had a safety concern today –</p>

2005 Legislative History Appendix, Volume I

<p>Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 110D</p>	<p>SARAH HOFMANN: Right.</p> <p>SENATOR MACDONALD: – how could the Legislature act on that concern today?</p> <p>SARAH HOFMANN: Well, I think – it would depend on what it was but, if it’s a safety concern, it goes to NRC.</p> <p>SENATOR MACDONALD: It was a safety concern that the Legislature believed was a safety concern.</p> <p>SARAH HOFMANN: There’s a way to petition the NRC with a safety concern. Also, obviously, we have a liaison to NRC –</p> <p>SENATOR MACDONALD: Anyway – [indiscernible] to petition the NRC. What control does the Legislature have over safety concerns today?</p> <p>SARAH HOFMANN: The Legislature cannot – the Legislature cannot control radiological safety.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:52:06]</p> <p>SENATOR MACDONALD: Let me rephrase the question. The Legislature believed that there was a safety concern. Could this Legislature withhold dry cask storage?</p> <p>SARAH HOFMANN: You are the Legislature and you could certainly deny this bill. You could vote this bill down.</p> <p>SENATOR MACDONALD: Okay.</p> <p>SARAH HOFMANN: Yes.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Statement of Senator Cummings Pl. Ex. 111A</p>	<p>[Track 1 00:00:04]</p> <p>SENATOR CUMMINGS: The benefit is that in the agreement we have dealt with some health and safety issues, which we would be preempted from doing by legislation.</p>
<p>June 2, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Peter</p>	<p>[Track 1 00:32:56]</p> <p>PETER ALEXANDER: We end up with dry casks, which Arnie Gunderson called targets, and you also have a spent-fuel pool, which is an immensely dangerous item in a terrorist scenario or in</p>

2005 Legislative History Appendix, Volume I

Alexander, New England Coalition Pl. Ex. 111B	an earthquake scenario.
June 2, 2005 Senate Finance Committee Hearing on H. 545 Statement of Senator White Pl. Ex. 111C	[Track 1 01:04:18] SENATOR WHITE: [O]ne senator made a comment to me that he thought that this agreement guaranteed our favorable rate. This has nothing to do with our favorable rate, and I told him that and he said, “Well, so then change it. Put it in the bill. But we have to get that favorable rate.”
June 2, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 112A	[Track 2 00:22:06] SARAH HOFMANN: The other thing is, I would just piggy-back on what he said, which is that it was very beneficial to the State to have this in an MOU instead of in the legislation because some of the things that are in the MOU could very easily be preempted if Entergy wanted to play that card.
June 2, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 112B	[Track 2 00:25:42] SARAH HOFMANN: There’s something called the National Academy of Science report that we relied on heavily in justifying why we’re asking for the things we’re asking for.
June 2, 2005 Senate Natural Resources Committee Hearing on H. 545 Testimony of Bill Sherman, State Nuclear Engineer Pl. Ex. 112C	[Track 2 00:26:03] BILL SHERMAN: National Academy of Science report that Ms. Hofmann mentioned was a report that was requested by Congress about the safety of spent fuel pools.
June 2, 2005 Senate Natural Resources Committee Hearing on H. 545 Pl. Ex. 114A	[Track 1 00:28:07] SENATOR 1: You looked at where that cloud goes? SENATOR 2: The what? SENATOR 1: The cloud goes if there’s some kind of malfunction there? It just goes out like this and it covers every little bit of the state except for Bennington. Just with the ordinary prevailing winds. All year round. It’s not a Windham – it’s not just a

2005 Legislative History Appendix, Volume I

	<p>Windham thing.</p> <p>SENATOR 3: No, we know that.</p> <p>SENATOR 2: I worked for agencies – human services. I was involved in planning the evacuation and where everyone went to the school and...</p> <p>SENATOR 1: Sure.</p>
<p>June 2, 2005 Senate Natural Resources Committee Hearing on H. 545 Statement of Senator White Pl. Ex. 114B</p>	<p>[Track 3 00:16:50] SENATOR WHITE: You know, the NRC has, in my opinion, not been the best friend of the population in this whole issue of nuclear power. So I, as a matter of fact, trust the 180 people up here with their limited knowledge a lot more than I trust the NRC in terms of their ability to act as an advocate for the population.</p>
<p>June 2, 2005 Senate Natural Resources Committee Hearing on H. 545 Pl. Ex. 114C</p>	<p>[Track 3 00:26:11] SENATOR: So I will not accept responsibility for 10,000 years worth of waste. I will accept the responsibility, as best I can, for being certain that whatever we allow is the safest for our citizens even though I don't have the right to regulate safety in the State.</p>
<p>June 3, 2005 Senate Finance Committee Hearing on H. 545 Statement of Representative Dostis Pl. Ex. 117A</p>	<p>[Track 1 00:30:59] REPRESENTATIVE DOSTIS: I see this being a bill as a way of getting dry cask storage under our terms, the terms that we negotiated in the MOU, both in terms of financial contribution and the safety issues. Now, mind you, the safety issues which we otherwise would be preempted from.</p>
<p>June 3, 2005 Senate Finance Committee Hearing on H. 545 Statement of Representative Dostis Pl. Ex. 117B</p>	<p>[Track 1 00:32:20] REPRESENTATIVE DOSTIS: As we started to work on a bill, it became very clear that there were a number of entities that were very concerned about the direction we were going, particularly around how much we were looking at charging them, and also how little there was in that bill regarding safety issues. Now, mind you, though, we had to be very careful not to talk about safety, because we don't want to preempt it – we don't want to be preempted.</p>
<p>June 3, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Commissioner O'Brien, Department of Public</p>	<p>[Track 1 00:27:09] SENATOR CUMMINGS: [P]eople are not quite so sure that you're that focused on the safety and the environment.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:27:50]</p>

2005 Legislative History Appendix, Volume I

<p>Service Pl. Ex. 118A</p>	<p>COMMISSIONER O'BRIEN: I appreciate where you're – what you're talking about, Senator. I – it's a hard thing to hear in the sense that some sort of perception is out there that we're – that we're laser-focused on rates and these other things take a second or third seat. I could cite plenty of different examples, whether it's transmission projects or anything else, and specifically with Vermont Yankee, where we have been entirely focused on safety considerations.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:31:33] COMMISSIONER O'BRIEN: I don't – I'm concerned if there is a sense that somehow we're not looking at safety.</p>
<p>June 3, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 119A</p>	<p>[Track 1 00:13:25] RICHARD COWART: I mean, if your reason for waiting till next year is, in the meantime you want to get better conditions, the question is through what mechanism are you going to get those conditions? You can attempt to get them by enacting legislation that commands them. And my concern, and I'm sure the concern that the Legislative Council would put to you, is that you're highly likely to be preempted if you do that.</p> <p>SENATOR AYER: If there's safety cond –</p> <p>RICHARD COWART: If there's safe –</p> <p>SENATOR AYER: Assuming there's safety –</p> <p>RICHARD COWART: I'm assuming the conditions you care about are safety conditions. So, the choice of waiting till next year and writing legislation to command them is likely to yield a ruling that you're preempted.</p>
<p>June 3, 2005 Senate Finance Committee Hearing on H. 545 Testimony of Richard Cowart, Regulatory Assistance Project Pl. Ex. 119B</p>	<p>[Track 1 00:21:14] RICHARD COWART: So, again, I think the House committee was quite conscious of wanting to be pro-safety in all of the – all of these ways that I'm setting out here.</p> <p>SENATOR CUMMINGS: There's been testimony in here about the potential – and actually we had testimony, I think, from Entergy several months ago, about the potential for in-ground – it was from Entergy – in-ground cask storage. And some people in the advocacy world think that sounds like it might be safer; you couldn't shoot rockets at it or rifles or whatever. In doing this now, are we precluding the ability to require in-ground storage in</p>

2005 Legislative History Appendix, Volume I

	<p>the future when it's approved? I mean, if they put in three casks in '07 and by the time it comes to doing the next three there is a better technology, maybe a more expensive but a better technology, are we precluding our ability at this point to do that?</p>
<p>June 3, 2005 Senate Floor Debate on H. 545 Statement of Senator Lyons Pl. Ex. 124A</p>	<p>[Track 1 00:20:30] SENATOR LYONS: Our goal in Natural Resources and Energy was to review and provide the safest possible storage for spent fuel rods while they're in Vermont. The National Academy of Sciences' recent article indicates, as do others, that dry cask is the safest. Oh yes, dry cask may well have its defects but the alternatives are worse, Mr. President. As I said in the beginning, no one wants to have spent fuel – nuclear fuel waste – in the State of Vermont. But we have protected ourselves as best we can as Entergy goes forward and we will have dry cask in the State as you have heard. Mr. President, I encourage this body to vote favorably on this bill. Thank you very much.</p>
<p>June 3, 2005 Senate Floor Debate on H. 545 Statement of Senator from Windsor Pl. Ex. 124B</p>	<p>[Track 1 00:25:18] SENATOR FROM WINDSOR: And since this is so important and there is this question of consideration, I'm going to read the witnesses who did appear and were given as much time as they needed and all of whom were subject to whatever questioning any member of the Finance Committee wanted to ask. From Entergy Nuclear, Brian Cosgrove and David McElwee; from the State of Vermont, David O'Brien, the commissioner of the Department of Public Service, testified several times; Bill Sherman, our nuclear engineer, who has a reputation as being just a vigorous and unrelenting advocate on behalf of public safety in nuclear issues.</p>
<p>June 3, 2005 Senate Floor Debate on H. 545 Statement of Senator from Windsor Pl. Ex. 124C</p>	<p>[Track 1 00:28:17] SENATOR FROM WINDSOR: In January when we began talking about this, it was quite obvious that the issue of public safety was going to be of paramount concern. We couldn't compromise cash for safety, permits for safety, or any of the apprehensions people have. Safety is not, was not, is not for sale under no conditions. And when we were talking this – about this among some of the senators who were going to have to be directly involved in the committee's jurisdiction, the question was, how do we get the kind of expertise that this Senate needs and we need to have available to us before we make such a momentous decision? And we decided to hire, through Legislative Council, a person who had significant background in regulatory matters involving all our utilities, including Vermont Yankee. And the person that we chose to hire was Mr. Cowart who, as many of you know, has extensive experience, first in the Public Service Department and</p>

2005 Legislative History Appendix, Volume I

	<p>then as chair of the Public Service Board. And his advice, I think, was immensely helpful to the House committees and then to us over here in the Senate as we tried to figure out what's the right thing to do when obviously none of us are knowledgeable in matters of nuclear regulation in nuclear plant safety.</p>
<p>June 3, 2005 Senate Floor Debate on H. 545 Statement of Senator from Windsor Pl. Ex. 124D</p>	<p>[Track 1 00:30:11] SENATOR FROM WINDSOR: One thing I want to say, too, on a personal level, I feel this is an extremely difficult issue and the reason it's very difficult is because whatever the odds are that there may be an event at a nuclear reactor, however long those odds may be, the consequences of something going wrong are immense. So I know that as I sat through the hearings in the Senate Finance Committee and I know I observed this in some of my colleagues in the Senate Finance Committee, we took very, very seriously this question of safety and the burden of responsibility on us, what was the right decision or what was the right recommendation to make to this General Assembly. And let me just go through the reasoning that led me to believe that the recommendation we're making is the one to follow. But let me just pause for one second, a little bit of background history. This question involving Vermont Yankee, or the questions involving Vermont Yankee, have come up many times in this General Assembly, some of that time I have been a member, others not. But every time there has been a question about whether we could do anything that would increase the role of our safety oversight, I favored it. There was a resolution by Senator MacDonald sponsored by him and several others of us that petitioned to have a upgraded safety assessment of the plant similar to what was done in Maine.</p>
<p>June 3, 2005 Senate Floor Debate on H. 545 Statement of Senator from Windsor Pl. Ex. 124E</p>	<p>[Track 1 00:40:41] SENATOR FROM WINDSOR: And all of us will have to make that independent judgment about what's in the best interest of the State. But I, for one, want to state categorically and explicitly that safety is the prime concern, safety is not for sale, no amount of money is worth it to increase any risk of danger to Vermonters. Thank you, Mr. President.</p>
<p>June 3, 2005 Senate Floor Debate on H. 545 Statement of Senator Ayer Pl. Ex. 124F</p>	<p>[Track 1 01:06:24] SENATOR: Thank you, Senator. Senator from Addison. SENATOR AYER: Thank you, Mr. President. I do not support nuclear power and I don't think I ever will until we find a way to take care of waste that remains lethal for generations and have nowhere to put it. But I find myself in the very painful position of</p>

2005 Legislative History Appendix, Volume I

	<p>supporting this bill for a couple of reasons. And one is that I don't see that we have little – or I don't think we have anything to gain by waiting until next January to take up the bill. My main concern is with the safety and safety issues depend on the feds – it's up to the feds to make conditions for Entergy in terms of safety or Entergy's own goodwill to enter into a Memorandum of Understanding, and I have no faith in the federal government and I don't have any reason to believe that Entergy wants to be – wants to do any more than it's doing.</p>
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2006 Legislative History Appendix, Volume I

2006

2006 Legislative History Appendix, Volume I

<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Gerry Morris, lobbyist, Entergy Nuclear Vermont Yankee Pl. Ex. 126A</p>	<p>[Track 1 00:21:35] GERRY MORRIS: Thank you. For the record, my name is Gerry Morris and I'm a contract lobbyist here in Vermont today representing Entergy Vermont Yankee. I am sitting in the chair and not a member of our senior management team because they're all over at the Public Service Board because our Certificate of Public Good hearing started a couple of days ago. And they send their apologies but of course they're willing and able to come as you please, Madam Chair, in the future on this.</p> <p>SENATOR CUMMINGS: Okay.</p> <p>GERRY MORRIS: Entergy Vermont Yankee does not support S. 124. We are committed to pursuing a Certificate of Public Good before the Public Service Board. We have every confidence that that process achieves the intent that the Legislature wished it to do when it created the PSB some decades ago. That's the end of my testimony.</p>
<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 126B</p>	<p>[Track 1 00:24:23] SARAH HOFMANN: The other – the more – the bigger thrust of this is that I don't think the legislation is needed. As you know from the 6545 MOU, the docket that was the sale case of Vermont Yankee, they have to come back to the Public Service Board. That was in an agreement with Entergy and Entergy agreed to waive any possible preemption claims, which was very important to us at the time to make sure they could not try and go to federal court and get around us. But the Board also memorialized that in their order. So they're coming to the Board. You have another place though, they have to come to the Legislature as well because of the way you wrote the dry cask legislation, which says that any fuel derived from the operation of Vermont Yankee after March 21, 2012, you have to come back to the Legislature to get approval. So there's no way that you can – there are two provisions in your dry cask bill. One is cumulative total, which of course if other fuel was shipped off, that would take care of that. But this language where you say it can't be derived from the operation of Vermont Yankee beyond March 21, 2012, they really have to come here because they eventually have to take that fuel out of the reactor and put it into spent fuel and that can't be shipped away right away. It has to sit in a fuel pool for five years at least before it can put into a dry cask. So you really did nail down them coming back to the Legislature for the dry cask approval and also for relicensing really. I mean, you're doing it in terms of dry cask, but you really have done it for the relicensing.</p>

2006 Legislative History Appendix, Volume I

<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of James Moore, Vermont Public Interest Research Group Pl. Ex. 126C LA 37</p>	<p>[Track 1 00:43:33] JAMES MOORE: Basically, we're going to have a facility in Vermont that was designed to run for 40 years. And we're going to look at running that facility for longer than that period of time. I would hope that a full safety checkup would be done on that facility and that that information would be available to legislators so that they knew what kind of facility they were approving or not approving, uh, to run in the State of Vermont.</p> <p>MADAM CHAIR: James, what did they call that thing that they did for Maine, the Maine nuclear plant? Is that called a full safety ...</p> <p>JAMES MOORE: Yeah. It was an independent – I think more than what it's called, there are a couple of key elements. One is that it's independent. I think it was an independent safety review, and my understanding is that the Public Service Board has asked for a review that the Legislature has, through resolutions, said that they would like.</p>
<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of James Moore, Vermont Public Interest Research Group Pl. Ex. 126D</p>	<p>[Track 1 00:49:55] JAMES MOORE: A couple other questions to throw out there for thought. One is what would the potential impact of an accident at Vermont Yankee – economic impact of an accident be in the State of Vermont? What is the condition of the physical structure and how would that impact the reliability of the facility and the plant safety and the communities, surrounding communities, economic viability? What is the potential economic impact on the State of Vermont in terms of property values, in terms of businesses locating here? What is the potential economic impact of Vermont playing host to high-level nuclear waste? And for what period of time would Vermont play host to high-level nuclear waste? Asking Entergy to come up with scenarios and what kind of guarantees could the State of Vermont secure that we wouldn't play host to high-level nuclear waste, seeing that the guarantees that we've gotten from the federal government so far haven't panned out.</p>
<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Arnie Gundersen, Fairewinds Associates Pl. Ex. 126E</p>	<p>[Track 1 01:01:47] ARNIE GUNDERSEN: The uh, um, there's a shell game going on. The uprate has increased the amount of radiation that, in the event of an accident, that would be released from Vermont Yankee by 40 percent. The 20 percent uprate will increase the amount of radiation by 40 percent.</p>

2006 Legislative History Appendix, Volume I

<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Arnie Gundersen, Fairewinds Associates Pl. Ex. 126F</p>	<p>[Track 1 01:04:25] ARNIE GUNDERSEN: Vermont is a brand and on a brand theme is purity and if this thing were popped, and I think, you know, we talked about likelihood earlier, the industry will say it's one in a million. I think it's maybe one in a hundred thousand or one in ten thousand. It's a good tenfold or a hundredfold lower reliability than the industry will propose. And, but the net effect is that we've got a brand here of purity and if the money we're saving on electricity, which is a real tangible asset, could get just wiped off the map if it were to blow....</p>
<p>February 1, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Tim Nulty, Vermont State Nuclear Advisory Panel Pl. Ex. 127A</p>	<p>[Track 1 00:10:25] TIM NULTY: And then so I – the question of the dry cask storage is related to the commissioning. It's related to the uprate because the uprate dramatically increases the amount of spent fuel they're going to generate. SENATOR CUMMINGS: Right. TIM NULTY: And these are not – this range of issues is not – the PSB is not institutionally equipped to think of them altogether. It's not allowed to think about safety, as you know. SENATOR CUMMINGS: Right. TIM NULTY: It's – there are some questions about the jurisdiction of the Legislature. But at the very least the Legislature would have jurisdiction to think about compensation. I mean, let's suppose that the NRC says that something is safe. We've established in VSNAP hearings, from out of the mouths of the NRC itself, that their view of safety is an on/off situation. So they look at everything and they decide that it has passed the threshold. The degree of safety, the degree of risk has reached the point or has fallen to a point where they say, okay, that's the cutoff. That's the threshold. The on/off switch and we deem it safe. They've admitted that that doesn't mean it is utterly safe. Even below that threshold there are degrees of risk. Now – SENATOR CUMMINGS: Un-safe. TIM NULTY: Yeah, and now they don't deal with that. And they've said that. We don't deal with that. That's not our problem. But there is at the very least the question that Vermont would want to say if a plant – even if a plant is deemed to be safe, that doesn't mean it's absolutely safe. And if there are measurable additional risks associated with, let's say, an uprate,</p>

2006 Legislative History Appendix, Volume I

	<p>even though it was deemed to be safe, should some compensation be arranged for this?</p> <p>SENATOR CUMMINGS: For these risks.</p> <p>TIM NULTY: Because there is –</p> <p>SENATOR CUMMINGS: Economic risks.</p> <p>TIM NULTY: Economic or – and – I mean economic and safety are related obviously. Uhm, the uh, yeah, I mean it’s something that – a safety problem has economic implications, also.</p> <p>SENATOR CUMMINGS: Oh, yes.</p> <p>TIM NULTY: Um, yeah.</p> <p>SENATOR 1: One of the, if I may, try and understand. One of the reasons that the NRC says that a plant is safe is because the NRC is convinced that if something appears to be going wrong that the plant can be shut down and the electricity turned off and prevent anyone from being injured or hurt or radioactivized.</p> <p>TIM NULTY: With a certain degree of confidence.</p> <p>SENATOR 1: With confidence. But once that happens, the electricity is gone.</p> <p>TIM NULTY: Right.</p> <p>SENATOR 2: If that happens, what?</p> <p>SENATOR 1: If you shut the plant down and keep anyone from being hurt by radioactive fallout and there’s no explosion, you have a plant that is safe. Shutdown. But from that day on, a huge economic problem occurs to Vermont.</p> <p>SENATOR 2: Uh-hmm.</p> <p>SENATOR 1: Because a third of our electricity is gone.</p> <p>TIM NULTY: Not only is it gone, I mean our electricity is the cheapest in New England and Vermont Yankee and the buyback arrangement is a big part of that.</p>
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2006 Legislative History Appendix, Volume I

<p>February 22, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Gerry Morris, lobbyist, Entergy Nuclear Vermont Yankee Pl. Ex. 128A</p>	<p>[Track 2 00:04:23] GERRY MORRIS: Madam Chair, in the interest of time, I was testifying two weeks ago and our position on S. 124 is that we still do not support it.</p>
<p>February 22, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Ed Anthes, Nuclear Free Vermont Pl. Ex. 128B</p>	<p>[Track 2 00:06:55] ED ANTHES: I'm pleased to be able to address some of the aspects that need to be considered in the relicensing decision. An informed assessment about the wisdom of operating Entergy Nuclear Vermont Yankee reactor beyond 2012 must include a thorough examination of those aspects of normal operation, early shutdown, and catastrophic shutdown, which could impact the general welfare of the people of Vermont.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:07:46] ED ANTHES: Vermont's reputation, our branding as a clean, wholesome place to live, to vacation, to do business, all of these are severely impacted by an accident or by a significant publicity about radiation releases at the Vernon reactor, at other Entergy reactors, or at other reactors of similar age, design, or uprate status.</p>
<p>February 28, 2006 Senate Finance Committee Hearing on S. 124 Pl. Ex. 130A</p>	<p>[Track 1 00:25:35] SENATOR: We're asking that studies be provided to legislators on health and safety and economics.</p>
<p>February 28, 2006 Senate Finance Committee Hearing on S. 124 Pl. Ex. 130B</p>	<p>[Track 1 00:27:28] SENATOR: And there's a couple of issues. There's the question of whether we believe the General Assembly should have some right to participate in looking at the evidence about health and safety, and economics, and energy policy, and there's a second question, which is the same as you and dry cask, whether, on behalf of the people of the State, there's some desire to have some bargaining leverage, frankly. Because what's going to happen here is that Vermont Yankee gets relicensed and they have no obligation whatsoever to sell us a kilowatt of power.</p>
<p>February 28, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Michael</p>	<p>[Track 2 04:15] MICHAEL DWORKIN: There is one area that the State cannot rely upon. It's been the law for several decades that the State is preempted in its concerns about radiological safety. So the State</p>

2006 Legislative History Appendix, Volume I

<p>Dworkin, Vermont Law School Pl. Ex. 130C</p>	<p>has to make its decision on other grounds, which would include anything from aesthetics to the obvious ones about financial implication to such things as reliability of the electric grid. All of those are legitimate reasons.</p>
<p>February 28, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Michael Dworkin, Vermont Law School Pl. Ex. 130D</p>	<p>[Track 2 00:12:22] REPRESENTATIVE AYER: How – I understand – this is Claire Ayer again. I understand that only the feds are allowed to think of safety issues, and we carefully don’t use that word here. But is this –</p> <p>MICHAEL DWORKIN: [Interposing] – although I think I saw it somewhere in the draft, but go ahead.</p> <p>REPRESENTATIVE AYER: But, even though these really are about safety issues, in a lot of cases. That won’t sort of mess things up that we’re asking the board to deal with those kinds of issues? Do you know what I’m – do you understand what I’m asking?</p> <p>MICHAEL DWORKIN: Well, I can tell you the way it’s traditionally been interpreted is this, that the federal authority has the right to say what the safety standards should be, and to define the actions that need to be taken immediate, and the States have to conclude or accept the federal definition of how safe it has to be and what has to be done.</p> <p>REPRESENTATIVE AYER: Mm-hmm.</p> <p>MICHAEL DWORKIN: The Supreme Court decided that in a case involving a California nuclear power plant in the late 1970s. However, it also said that if the State was acting on grounds that were not safety, but were financial or environmental beyond safety –</p> <p>REPRESENTATIVE AYER: Mm-hmm.</p> <p>MICHAEL DWORKIN: -- that the State had the authority to consider those issues. So the way it works in practice is you do something like, say, let’s assume that they are going to have to meet the federal standard, and that meeting the federal standard will cost X zillion dollars, whatever it is, now we feed that number into the analysis and whether it makes economic sense for the people of Vermont to buy it from a unit that’s going to cost that much.</p>

2006 Legislative History Appendix, Volume I

	<p>REPRESENTATIVE AYER: Mmm.</p> <p>MICHAEL DWORKIN: The other thing that we can consider, and have – is reliability.</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Testimony of James Volz, Public Service Board Pl. Ex. 134A</p>	<p>[Track 1 00:06:51]</p> <p>CHAIRMAN VOLZ: On the next page, under the public engagement objectives, I'll just point out, I'm not asking, suggesting, for you to make a change, but on the fourth line you mention safety, safety issues and...</p> <p>SENATOR CUMMINGS: Yes.</p> <p>CHAIRMAN VOLZ: -- you know, technically the State is preempted from engaging in those. Now, this is under the public engagement section and I guess the way we would handle this is, we would be clear on our report that we'd make a distinction between the safety issues that we are preempted from and the other topics that we're allowed to talk about.</p> <p>SENATOR CUMMINGS: Are you allowed to talk about environmental safety?</p> <p>JIM VOLZ: We're allowed to talk about effect on the environment. Yes.</p> <p>SENATOR 1: Evacuations and things like that.</p> <p>CHAIRMAN VOLZ: And then safety that affects people in other areas. You can ask the department about this. I think they're more –</p> <p>SENATOR CUMMINGS: Okay, we might be able to get a better term than safety or modify safety so it –</p> <p>SENATOR 2: Safety implies people, right?</p> <p>CHAIRMAN VOLZ: If you ask me, in my view, it did. It does.</p> <p>SENATOR CUMMINGS: We can't talk about whether or not they're going to get radiation poisoning, but if something happens, we can talk about if we can get them out of there fast enough.</p> <p>CHAIRMAN VOLZ: I think so. If it's evacuation related, safety issues relating to evacuation, I think that might be okay, but, like I said, I think the department knows where the lines are – the</p>

2006 Legislative History Appendix, Volume I

	<p>jurisdiction lines better than I do.</p> <p>SENATOR CUMMINGS: Okay. [Indiscernible]</p> <p>CHAIRMAN VOLZ: My concern is simply that if we introduced –</p> <p>SENATOR CUMMINGS: Yeah.</p> <p>CHAIRMAN VOLZ: – an inappropriate safety discussion into this report and then the Legislature took up the report, it could end up causing – creating the possibility for preemption later on.</p> <p>SENATOR CUMMINGS: Yes.</p> <p>CHAIRMAN VOLZ: If somebody suggested that the Legislature’s decision was really based on that safety discussion that’s in this report and it’s not really based on other factors that are probably as well so.</p> <p>SENATOR CUMMINGS: Okay, let’s find another word for safety.</p> <p>CHAIRMAN VOLZ: And the same things happens at the bottom of the page where you reference public health issues. That’s another –</p> <p>SENATOR CUMMINGS: Yes.</p> <p>CHAIRMAN VOLZ: – potential problem.</p> <p>SENATOR 3: We’re not supposed to talk about public health?</p> <p>CHAIRMAN VOLZ: Excuse me?</p> <p>SENATOR 3: We’re not supposed to talk about public health?</p> <p>CHAIRMAN VOLZ: Well, it depends on if it relates to, you know –</p> <p>SENATOR 3: Safety?</p> <p>CHAIRMAN VOLZ: – it depends on how broad it is. All right. If it’s radiological...</p> <p>SENATOR CUMMINGS: If it’s the kind of thing that could red</p>
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2006 Legislative History Appendix, Volume I

	<p>flag a preemption...</p> <p>CHAIRMAN VOLZ: Yes.</p> <p>SENATOR 3: That means our decision being preempted by the feds?</p> <p>CHAIRMAN VOLZ: Right.</p> <p>SENATOR 3: Okay.</p> <p>CHAIRMAN VOLZ: Your issue is – you’re going to approve this enact – a legislative enactment so it’s a statute. Somebody could go to federal court and say this statute’s invalid, it’s preempted by federal law, because it’s based on radiological safety. So I just – I want to – I don’t want – I just want to alert you to that potential. Maybe you want to take some testimony from the other witnesses about it.</p> <p>SENATOR 1: I understand what the concern the witness is bringing to our attention. And in a, I would expect that we would write this, modify it in a way, to say that the board may come back and say these areas of safety are the prerogative of the NRC and they are not –</p> <p>CHAIRMAN VOLZ: Right.</p> <p>SENATOR 1: – and these areas of how to do emergency evaluations are the State’s prerogative and this is what we have to tell you.</p> <p>CHAIRMAN VOLZ: If you don’t make a change to this, there’s no problem. When we do our report, we will keep everything clear.</p> <p>SENATOR 1: Okay.</p> <p>CHAIRMAN VOLZ: But I just wanted to just make you aware of this issue. That’s all.</p> <p>SENATOR CUMMINGS: Okay.</p> <p>CHAIRMAN VOLZ: But if you did make a change, that might be okay. It might be wise to make a change, but if you don’t, we’ll be sure that we keep it all straight.</p>
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2006 Legislative History Appendix, Volume I

<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 134B</p>	<p>[Track 1 00:17:48] SARAH HOFMANN: Um, I had similar issues on page three with the bill, which is the – both the ones that Chairman Volz just pointed out. The safety in the first paragraph and in the bottom public health issues. As he indicated, of course, you can write what you want. You’re the Legislature, but your chances of being preempted increase with the use of that kind of language. And we would suggest that we find some alternative language to be placed into the bill if this continues in its present form.</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Gerry Morris, lobbyist, Entergy Nuclear Vermont Yankee Pl. Ex. 134C</p>	<p>[Track 1 00:19:50] GERRY MORRIS: Thank you, Madam Chair, members of the committee. For the record, my name is Gerry Morris. I am a contract lobbyist here today representing Entergy Vermont Yankee. This is my third time that I’m testifying on this issue and we still feel that we oppose this bill. As you know, you passed the dry cask storage bill last year, which requires us to come back before the Legislature. And we feel this is redundant. We oppose the bill as introduced. We oppose this draft and I would like to see the final draft though before you vote on it so I can send it back to Entergy for their review, if that’s okay.</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 134D</p>	<p>[Track 1 00:41:42] SENATOR CUMMINGS: This section 102 or 231, those I think – I haven’t and I’m assuming, committee, that these are all – the question we haven’t asked as the committee is, do we want to strike references to safety? BILL RUSSELL: I have done that. SENATOR CUMMINGS: You have? BILL RUSSELL: Well, if we don’t want to we can – MALE SPEAKER 3: We – MADAM CHAIR: You have struck? BILL RUSSELL: Some of them.</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Pl. Ex. 134E</p>	<p>[Track 1 00:54:28] SENATOR: Okay. So we want the General Assembly to have the information as developed through the process at the PSB because it’s relevant to their consideration, cost/benefit, their studies, and safety questions. We want to give latitude to the General Assembly.</p>

2006 Legislative History Appendix, Volume I

<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Pl. Ex. 134F</p>	<p>[Track 1 01:03:55] SENATOR 1: When the General Assembly – SENATOR 2: I don’t know any legislators that are going to sit down and negotiate the price of electricity as a long-term contract. Uh, I mean there are, you know, it’s beyond our expertise, but – SENATOR 1: Well that’s why – that’s one of the reasons we, I don’t think, can be saying that we will amend or direct the PSB to amend its order because they’ll have gone through a whole evidentiary process and we won’t. Or you know, who knows what we’ll do. SENATOR CUMMINGS: We can say contingent upon, uh, Entergy entering into a contract that is beneficial to the ratepayers of Vermont, you know, under the supervision of the Department of Public Service and the Public Service Board. You know – SENATOR 1: But that’s us saying, it’s not telling them. SENATOR 2: What do we accomplish with this? I mean, I’m serious. I’m trying to get a grasp to what we’re – SENATOR 1: Here’s what we accomplish, alright? Here’s the bottom line. 2012 comes. They seek relicensing. They get relicensing. Alright? Through the certificate process. There is absolutely no requirement that VY sell us a kilowatt of power. SENATOR 2: But can the board ask them to do that? SENATOR 1: No, it can – SENATOR 2: I mean, can that be part of something that we put in the statute that we looked at? SENATOR 3: The board could ask for that, couldn’t they, as part of the relicensing. It’s a Certificate of Public Good. How good is it for us if we can’t buy any electricity?</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Pl. Ex. 135A</p>	<p>[Track 1 00:12:50] SENATOR 1: Well and then I also think that if we base our legislation on what we learn from our constituents most of that is going to be about safety. That’s what most of the arguments are about. So does all of our work get overturned because – SENATOR 2: No. SENATOR 1: – by the feds because it’s based on safety? That’s all it’s going to be based on.</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Statement of Senator</p>	<p>SENATOR CUMMINGS: Well there’s all these things out here that they don’t know because we can’t afford, you know, to hire experts and get stuff in evidentiary place and we can sit here and listen to three-headed turtles and sterile sheep and whatever we</p>

2006 Legislative History Appendix, Volume I

<p>Cummings Pl. Ex. 135B</p>	<p>want to listen to and we can make our own decision. And we can have a much broader range of ability to hear and to, you know, than the Board does. The board for good reasons has much more constraint. We may need more constraint, but we don't have it. So this gives the folks that think perhaps they don't get heard at the board level, the ability to be heard by their elected representatives.</p>
<p>March 2, 2006 Senate Finance Committee Hearing on S. 124 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 136A</p>	<p>[Track 1 00:40:54] BILL RUSSELL: Public health issues, are they safety issues? SENATOR 1: That's pretty close. BILL RUSSELL: Yeah. I'm... SENATOR CUMMINGS: Is that going to give us a preemption issue? BILL RUSSELL: I don't know why you... SENATOR 2: Would it be the public health responsible – the State's public health responsibilities or emergency preparedness or ... ? BILL RUSSELL: You know, I think you can examine these issues as long as you don't base your... SENATOR CUMMINGS: Okay. BILL RUSSELL: ...and you'd base the economics of the thing on... So, um, let's – maybe I could phrase that better. Then...</p>
<p>March 22, 2006 Senate Finance Committee Hearing on S. 124 Statement of Senator Cummings Pl. Ex. 140A</p>	<p>[Track 1 00:47:27] SENATOR CUMMINGS: There are issues that we have learned in 40 years. When we licensed this, we took it face value that the federal government was going to take all those spent fuel rods and they were going away. They aren't going away. And they probably aren't going to go away in the next 40 years. So we need, as a Legislature, to say, okay, do we want another 40 years worth of radioactive materials sitting somewhere in this State? I think the people down in Windham County are getting a little concerned and obviously the closer you live to that radioactivity, the more concerned you are.</p>
<p>March 22, 2006 House Natural Resources Committee Hearing on S. 124 Statement of Senator Cummings Pl. Ex. 140B</p>	<p>[Track 2 00:01:39] SENATOR CUMMINGS: What we tried to focus on was the – what would be responsible behavior on the part of the Legislature for what was, you know, a very important process. We only have one nuclear power plant. I have family that lives near Three Mile Island. I have a son who's visited a Chernobyl-style reactor with a picture window. When something goes wrong with a nuclear power plant, the possible negative results are a lot worse than if a windmill breaks a blade or kills some birds or throws some ice.</p>

2006 Legislative History Appendix, Volume I

	<p>You know, it's just that there is a potential here, enough potential that the Legislature felt that it was a public policy decision that they needed to make.</p>
<p>March 22, 2006 House Natural Resources Committee Hearing on S. 124 Statement of Senator Cummings Pl. Ex. 140C</p>	<p>[Track 2 00:05:35] SENATOR CUMMINGS: I don't think we want to make a premature decision at this point, driven either by the fact that we need this electric power to keep our rates reasonable or in five years we may find out we don't need that power. I mean, if we get up enough wind farms or somebody discovers a new source of power. We don't know that yet, but I think, but I think we'd like to be able to negotiate and negotiate with some bargaining leverage in there.</p>
<p>March 29, 2006 House Natural Resources Committee Hearing on S. 124 Pl. Ex. 144A</p>	<p>[Track 1 00:10:40] REPRESENTATIVE KLEIN: In the 248 process and the CPG process, when you're weighing out the – for the public good, do you take into consideration whether or not there is an agreement in place that Vermonters will get kilowatt hours from this plant and at a preferable – for a lack of a better term – price? If the CPG process can't – if they were going to the CPG process and there was no – and they're a merchant plant and there is no agreement on where this electricity is going to be sold to, is that taken into consideration?</p>
<p>March 29, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 144B</p>	<p>[Track 2 00:01:05] SARAH HOFMANN: First of all, in the preamble of the bill, we think that the stating the policy and the purpose, that's on page 2, we think we can help you with some language to prevent preemption problems. There are some things the State can look at, like need and alternatives, and we probably, as the department, can help you come up with some language that you could put at the top to hopefully prevent preemption problems. It's not going to tell you that you're not going to – you're never going to have a preemption challenge, but we can help you do another way that will minimize those risks.</p>
<p>March 29, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 144C</p>	<p>[Track 2 00:13:46] SARAH HOFMANN: There are a few things in the public engagement section process that could court preemption challenges. We can get that. We can help you clean that up.</p>

2006 Legislative History Appendix, Volume I

<p>March 29, 2006 House Natural Resources Committee Hearing on S. 124 Statement of Representative Klein Pl. Ex. 144D</p>	<p>[Track 2 00:44:26] REPRESENTATIVE KLEIN: Here's the difference for me. I think it's appropriate and I think it brings finality to a situation if you let the people decide on the policy of whether or not we want to continue forward with this type of fuel, it's settled once and for all. If you just have the dry cask storage issue as the safety gap, as the only stopgap measure that you have –</p> <p>REPRESENTATIVE ERRECART: OK 'cause we don't say safety when we're talking Vermont Yankee in this room.</p>
<p>March 29, 2006 House Natural Resources Committee Hearing on S. 124 Pl. Ex. 146A</p>	<p>[Track 1 00:47:18] REPRESENTATIVE: Could I ask Joe a question? Joe?</p> <p>SPEAKER: Mm-hmm.</p> <p>REPRESENTATIVE: First I need to know if you feel that nuclear power –</p> <p>SPEAKER: [Interposing] Mm-hmm.</p> <p>REPRESENTATIVE: – is the same as wind power in terms, in terms of the level of questioning that you have to ask? One, one is potentially low probability, high impact in terms of risk to the public. You have to guard it. You have to insure it from terrorist attacks. You have to – you have to manage it very differently in all aspects. And if you – you – I don't see this as – I do see it all as energy but I think, given the nature of the energy, that the – you don't ask the same questions about it because they're different. Wind power is low impact, low probability, low risk. In terms of it – you can't ask the same questions of nuclear power that you're asking about wind. They're different things.</p>
<p>April 4, 2006 House Natural Resources Committee Hearing on S. 124 Statement of Representative Klein Pl. Ex. 146B</p>	<p>[Track 1 00:39:41] REPRESENTATIVE KLEIN: When we talk about fact finding process, I don't see that as being Entergy convincing us to OK it. That's what happened last year. We never really took a look at the long-term economics of how long this stuff is going to probably be sitting in Vermont. That's something that we may know in the next couple of years. It's something that Entergy – we didn't even establish the fact of how long this stuff with nuclear waste lasted. Everyone said over a hundred thousand years except for Entergy, that said between a few hundred and a few thousand years. I mean, when we talk about fact finding, that's something we have to look at and go OK, is it true that Entergy, what Entergy is saying, that it's going to be here a few</p>

2006 Legislative History Appendix, Volume I

	<p>hundred or a thousand years, or is it true that it's going to be dangerous for a hundred thousand years?</p>
<p>April 19, 2006 House Natural Resources Committee Hearing on S. 124 Statement of Representative Darrow Pl. Ex. 149A</p>	<p>[Track 1 00:37:34] REPRESENTATIVE DARROW: I mean, we live – you know, for those of us who live in the proximity of the plant tend to be much more aware of the risks and the dangers of the possibility that the dry casks, with the high-level nuclear waste, may be there forever.</p>
<p>April 19, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Deputy Commissioner Rich Smith, Department of Public Service Pl. Ex. 151A</p>	<p>[Track 1 00:09:32] RICH SMITH: I'm sorry I didn't mean to. But sort of looking at it from and it's obviously a couple times in the bill where it says an economic analysis based on – or new – I'm forgetting the exact words, new economic analysis, safety concerns – no safety concerns, right, because that would be – environmental health. Those are, I think, the three.</p>
<p>April 19, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Deputy Commissioner Rich Smith, Department of Public Service Pl. Ex. 151B</p>	<p>[Track 1 00:11:10] RICH SMITH: The other issue is, I guess one concern I have with that is there is a history of how the plant is operated and I think that we would want to take that into consideration as we went forward in terms of that. And we're worried that this language may say, you can't look at that. It's almost like saying you can't look that this plant was operated safely or unsafely, depending on your point of view, but you can't look at the history of this plant going forward and I want to make sure that the board does – is able to look at that.</p>
<p>April 19, 2006 House Natural Resources Committee Hearing on S. 124 Pl. Ex. 151C</p>	<p>[Track 1 00:16:01] REPRESENTATIVE: Why was that? I understand what you're saying but I'm just kind of interested if we go back in history. Why wasn't that issue raised when we passed Act 74? Everybody knew that Yankee was going to go for relicensing. That's why they went for – they made no bones about.</p> <p>RICH SMITH: Made no bones about? The time frame?</p> <p>REPRESENTATIVE: They had a three-legged stool here. They were going to get dry cask storage, uprate, and license extension, that was their business plan. So it wasn't like anybody didn't think last year when we were dealing with permission for dry cask storage that they weren't going to be coming for relicensing. And</p>

2006 Legislative History Appendix, Volume I

	<p>the way that Act 74 is written and passed and is statutorily required, they need the permission of the Legislature to store any spent fuel after March of 2012 and there's nothing in that act that requires the Legislature to act.</p>
<p>April 20, 2006 House Natural Resources Committee Hearings on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 154A</p>	<p>[Track 1 00:01:38] SARAH HOFMANN: Later on you have issues relating to the long-term storage of nuclear waste. I'm going to tell you, you may end up with a preemption problem. Uh, that is a gray area. There are some states, such as California, who have done some things with that. I'm not going to tell you to take it out, but I want you to know it is a gray area and you may end up being preempted.</p>
<p>April 20, 2006 House Natural Resources Committee Hearings on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 154B</p>	<p>[Track 1 00:02:42] SARAH HOFMANN: Can you actually say they can't have a dry fuel storage facility? That's probably where you're stepping over the line.</p>
<p>April 20, 2006 House Natural Resources Committee Hearings on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 154C</p>	<p>[Track 1 00:04:55] SARAH HOFMANN: Economics are usually a safe place for the State to reside.</p>
<p>April 20, 2006 House Natural Resources Committee Hearings on S. 124 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 154D</p>	<p>[Track 1 00:05:45] SARAH HOFMANN: You have a number of things listed in Section 1(A), (B), (C), (D), and (E) and (F) and (C) and (D) are more substantive than the other things you have. And so you may want to put them in some place where it's actually going to be in the statute books.</p>

2006 Legislative History Appendix, Volume I

<p>April 20, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Kerrick Johnson, Central Vermont Public Service Pl. Ex. 155A</p>	<p>[Track 1 00:19:21] KERRICK JOHNSON: I do have concerns with regards to the dual, or dueling, public processes, because if we have one for Vermont Yankee and, yes, there are some very specific safety con – situations. No question. Or, excuse me, economics, storage – things that don’t, cannot be preempted, excuse me, that are associated with nuclear power.</p>
<p>April 20, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Kerrick Johnson, Central Vermont Public Service Pl. Ex. 155B</p>	<p>[Track 1 00:24:23] REPRESENTATIVE: [T]here’s going to have to be a deal in place that the Public Service Board is, is going to be able to have to, is going to be looking at, that’s going to be part of whether they decide a CPG is proper to go forward with. Because if the people of Vermont are not going to benefit from a sufficient amount of power at a good enough price or a long enough contract... KERRICK JOHNSON: Mm-hmm. MALE SPEAKER: ... there’s no reason to have this plant operate in our, in our region. KERRICK JOHNSON: I think, I think that point is arguable. MALE SPEAKER: It’s arguable but it’s pretty strong point.</p>
<p>April 20, 2006 House Natural Resources Committee Hearing on S. 124 Testimony of Brian Cosgrove, Entergy Nuclear Vermont Yankee Pl. Ex. 155C</p>	<p>[Track 2 00:02:40] BRIAN COSGROVE: Thank you Mr. Chairman. For the record my name is Brain Cosgrove. I’m Director of Government Affairs for Entergy Nuclear Vermont Yankee. I appreciate the opportunity to be here today and I would just like to begin by thanking Representative Darrow for trying to give us a little opening with, uh, CVPS in our negotiation, we appreciate it. Just about a year ago, in May 2005, we felt that Vermont Yankee, that we had found a clear way forward to license renewal and that sort of thing, as a result of the work that we have done in this committee on dry fuel storage and a lot of hard work by a lot of people and a lot of good faith work and we certainly appreciated that. Also, understand that I’m here today because you guys again are doing a very good faith effort to try to grapple and approve a Senate bill that came out earlier this year and that’s really the genesis of the reason we’re here today. And I appreciate all the efforts. I think that there has been a really, obviously, a lot of hard work that’s gone into it. As promised, we have given</p>

2006 Legislative History Appendix, Volume I

	<p>Representative Klein a couple of suggestions for changes in the language of this bill in accordance with some of the things that had been said earlier. We certainly, in view of the Senate bill, appreciate what you've done to try to reduce the one bite of the apple, as other people have said also. We would like to say that we appreciate also the comments that were made earlier today that we could be included to the degree possible in VESRA and not be treated as a standalone of sorts.</p> <p>However, all that being said, we still feel that we're going to stay with our original position on this bill when it was in the Senate, is that it is not necessary. And we thought after last year we had a, as I said a, a clear way through. Think that the Public Service Board 248 process is adequate. We felt that the language in the dry fuel storage legislation last year provided an up-and-down vote, a policy vote, if you will, in the Legislature. And, obviously, in the process of considering the dry fuel storage issue, there was room there probably to explore other issues at the will of the Legislature and we understood that to be true as well. So, all those things being said it, it seems to us that we continue to believe that this bill is not necessary and that we're not able to support it. But, again, I thank everybody for their hard work and, and I believe good faith efforts to do the right thing.</p>
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2008 Legislative History Appendix, Volume I

2008

2008 Legislative History Appendix, Volume I

<p>January 29, 2008 Senate Finance Committee Hearing on S. 364 Statement of Senator Shumlin Pl. Ex. 164A</p>	<p>[Track 1 00:01:26] SENATOR SHUMLIN: [W]hen I was a private citizen and you all were talking about the uprate, there was general agreement among the governor, the Legislature, the department, that there should be an independent safety inspection before an uprate was approved.</p>
<p>January 29, 2008 Senate Finance Committee Hearing on S. 364 Statement of Senator Shumlin Pl. Ex. 164B</p>	<p>[Track 1 00:03:32] SENATOR SHUMLIN: I personally do not have confidence that the NRC has the will or the ability to do the job that needs to be done.</p>
<p>January 29, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Commissioner David O'Brien, Department of Public Service Pl. Ex. 165A</p>	<p>[Track 14 00:02:07] COMMISSIONER O'BRIEN: The bill, um, for example does acknowledge, and this is one of the sticky things here, is that the whole issue of jurisdiction, and, you know, can a bill be passed by this Legislature that requires a review where the NRC has a pretty clear line of jurisdiction, and may very well be preemptive, but at least this bill acknowledges that, that possibility and lays out a path for that. I think that some of the things to think about is that, certainly the jurisdictional question there and also that, I'm of two minds on the Public Service Board role here. In the first instance, I like the role of the Public Service Board because that allows it to be deliberative and thorough, but I think the Public Service Board, if they were here, would say, "Well, nuclear safety is not our purview and our background." So they're going to be, I guess challenged in that, in that sense and we'd have to figure out a way for them to be able to make these sorts of determinations that this bill talks about.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 168A</p>	<p>[Track 1 00:22:33] RAY SHADIS: In a period of about 20 years ago, the U.S. Nuclear Regulatory Commission was still reeling from the bad publicity of the bad day of Three Mile Island. And as a result, they began to try to tighten up their inspection program, revamp their analysis. I mean, you can inspect forever, but then what did the results mean in terms of whether you have a plant that is acceptably safe or is over the line and is not safe enough and so on.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364</p>	<p>[Track 00:23:53] RAY SHADIS: We've been 50 years in the business without something like Chernobyl happening here and... you know, that,</p>

2008 Legislative History Appendix, Volume I

<p>Testimony of Ray Shadis, New England Coalition Pl. Ex. 168B</p>	<p>to me that's a miracle, and I'd rather not depend on miracles given my lack of state of grace.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 168C</p>	<p>[Track 1 00:30:11] RAY SHADIS: At the same time as it happened, the citizens of Maine had harassed the governor into asking for a safety inspection. In fact, they called it a safety assessment that would show the people of Maine that this was a good plant.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:33:22] RAY SHADIS: We put it in terms of, is the plant safe or not safe, is it reliable or not reliable? But the NRC traditionally puts it in terms of, is this plant in conformance with its design basis? More importantly, I guess, even preceding that, is the design basis of the plant correct and has it been applied directly and is it maintained?</p> <p style="text-align: center;">***</p> <p>[Track 1 00:34:32] RAY SHADIS: Maybe a pump will indeed put out X number of gallons per second on demand, but in a certain emergency situation, maybe that's not what you want, and so that has to be analyzed.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of David Lochbaum, Union of Concerned Scientists Pl. Ex. 168D</p>	<p>[Track 1 00:46:46] DAVID LOCHBAUM: The factors that triggered the 1996 Independent Safety Assessment at Maine Yankee are present today at Vermont Yankee.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:48:02] DAVID LOCHBAUM: In April of 2002, the Reactor Oversight Process told the NRC that the Davis-Besse Plant in Ohio was among the best, if not the best, safety performer in the Midwest. Nothing could have been further from the truth. Davis-Besse operated closer to nuclear disaster than any other U.S. reactor since Three Mile Island's meltdown in 1979.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:48:32] DAVID LOCHBAUM: From a safety advocate's perspective, it is impossible to oppose an Independent Safety Assessment. An ISA cannot reduce safety levels, and it actually can restore safety levels through the identification and resolution of those problems. For that reason alone, S. 269 has merit.</p>

2008 Legislative History Appendix, Volume I

	<p style="text-align: center;">***</p> <p>[Track 1 00:53:04] DAVID LOCHBAUM: An ISA focuses more strobe lights on the issue than the regulatory oversight process does. As a result, more ground is covered, and, if they exist, more safety problems are exposed. When safety problems are properly handled – when those findings on safety are properly handled – the ISA results in fewer and smaller holes in the three levels of quality defense. The ISA thus provides greater short-term and long-term safety benefits. It identifies more safety problems now for greater short-term benefit and it fixes more holes in the three levels of quality defense for greater long-term benefit. The ISA is therefore a win-win proposition. For those reasons, UCS supports S. 269. The ISA it seeks would benefit the people of Vermont.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:54:24] SENATOR CUMMINGS: Okay. Thank you. That was very clear and very helpful.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 168E</p>	<p>[Track 1 01:04:12] RAY SHADIS: Well, okay. It would take more than 30 years of inspection before they got around to equaling the 1996 Independent Safety Assessment. I mean, you can juggle the numbers all kinds of ways, but it would be an intergenerational phenomenon. And, in the meantime, the design basis issues continue to emerge, they continue to grow, things continue to fail, modifications continue to be made, programs adjusted. So the, you know, the NRC will say that they have an ongoing program, that a new ISA would be a snapshot. But really that's turning – turning it on its head. If anyone is doing snapshots, it's them – they're doing it every three years. And it will take 30 years before it adds up to the family photo album that the ISA represents. It's... it's a... a bigger, larger picture and all of the relatives are included. I'm going to end with this. It is... If one wants the very best examination that would give the people of the area assurance about the plant, then one wants the best thing in NRC's toolbox, which is the diagnostic evaluation team inspection that was called an ISA at Maine Yankee.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ray Shadis, New England Collation Pl. Ex. 168F</p>	<p>[Track 1 01:06:14] RAY SHADIS: We want it to have that vertical component going down through a system and then you also want to check on plant performance, operations management, so when an issue is found, whether they term it safety significant or not, you want an extended lateral or horizontal look at plant operations to find out</p>

2008 Legislative History Appendix, Volume I

	<p>why – why that is there.</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ed Anthes, Nuclear Free Vermont Pl. Ex. 169A</p>	<p>[Track 1 00:00:05] ED ANTHES: The NRC and ENVY think everything is just swell in Vernon and no further oversight is needed. The Douglas administration can be expected to accept a minor review as the Public Service Board did before the 20 percent power boost began; maybe 1,000 hour document review.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:01:25] ED ANTHES: A CVA would thoroughly examine specific safety and reliability systems to certify that each one of those systems is able to perform its critical safety function as designed.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:03:43] ED ANTHES: I believe that only through a thorough comprehensive vertical audit, by whatever name, can we be assured, and the Legislature and the regulators be assured, that Entergy Nuclear can be operated safely and reliably for 20 more years.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:06:05] ED ANTHES: What the – this audit can look at is the systems that run – the systems, the people, the procedures that run that reactor, is that a safe component, is that a safe thing?</p> <p style="text-align: center;">***</p> <p>[Track 1 00:06:55] ED ANTHES: But going back to your question about the audit itself. That answers the question – really it answers the question, is it safe for the next three or four years?</p>
<p>January 30, 2008 Senate Finance Committee Hearing on S. 364 Testimony of James Moore, Vermont Public Interest Research Group Pl. Ex. 170A</p>	<p>[Track 1 00:02:11] JAMES MOORE: Second point is that, as Vermont Yankee ages, it should undergo continual independent review until the Legislature determines that safety inspections done by the NRC satisfy Vermont’s desire to ensure the facility can be deemed adequately reliable. Until something changes and we have a greater level of confidence in the NRC, reliability is an issue that the State has purview.</p>
<p>February 21, 2008 Senate Finance Committee Hearing on S. 364</p>	<p>[Track 7 00:03:48] SENATOR CUMMINGS: There’s a big difference between 10 and 60 years, and I think that’s where the concern of this</p>

2008 Legislative History Appendix, Volume I

<p>Statement of Senator Cummings Pl. Ex. 172A</p>	<p>committee – there’s no feeling that the Legislature ever bought into 60 years of safe storage waiting for a fund to mature. And it looks that if, for whatever reason somebody defaults on that guarantee, what kind of recourse we have if Vermont Yankee, LLC has gone away, it’s belly up, it’s got no assets to attach.</p>
<p>February 21, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 173A</p>	<p>[Track 4 00:00:53] BILL RUSSELL: As I say, there is some disagreement in what it should be called. This is deliberately called a vertical assess – audit that it is not to be confused with ISA NRC assessment practices.</p>
<p>February 21, 2008 Senate Finance Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 173B</p>	<p>[Track 6 00:00:08] SENATOR CUMMINGS: Right now we’ve been asked by leadership to get this piece of the bill out, and it will be a committee bill when it comes out because we are going to deal with safety.</p>
<p>February 21, 2008 Senate Finance Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 173C</p>	<p>[Track 8 00:04:53] SENATOR CUMMINGS: [T]hat kind of, people with information but no dog in this fight, that would just make sure that the information is gathered, it is not cut and paste from corporate safety reports, which was the complaint that came in about the NRC that they were just cutting and pasting.</p>
<p>February 26, 2008 Senate Finance Committee Hearing on S. 364 Testimony of James Volz, Public Service Board Pl. Ex. 175A</p>	<p>[Track 14 00:03:30] CHAIRMAN VOLZ: I’m Jim Volz with – I’m the Chairman of the Vermont Public Service Board. I’ve looked over S. 269 draft number three and I just have a few sort of big picture comments about it. Certainly the board is very concerned about safety and about the same concern that you have here and why you want to do this bill. I don’t think anybody has any disagreement that we want the, the plant to be safe. We also want it to be reliable and I think that’s the issue that’s really within the purview of the board, the safety is more the NRC and we’re preempted.</p> <p>We can look at safety in the context of its effect on reliability or its effect on economic benefit. But we can’t actually make it – pass judgment on whether something is or isn’t safe, that’s really the NRC’s area. So, I would just caution you on that and suggest that you make sure the bill is properly focused on reliability and economic impacts and not so much on safety.</p>

2008 Legislative History Appendix, Volume I

<p>February 26, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 176A</p>	<p>[Track 8 00:01:50] RAY SHADIS: In the first place, both the Vermont Public Service Board in the uprate docket and the NRC commissioners wrote that the issues of safety and reliability are intertwined. In fact, Chairman Dworkin of the Vermont Public Service Board said they were inextricably intertwined. And if you find, if you find when you examine this plant that there are issues that are going to lead to breakdowns, that are going to lead to sudden power shifts, you know, it is on the border of safety related, you know. We've had a fire. We had the cooling tower collapse, and they were right on the fringe of being safety related issues. So you know, what you would want is for the company to address these issues in a real professional, satisfactory way, a thorough way. And, you know, the one agency that really has the authority to make certain that these things are properly addressed is the NRC, and I think, you know, from that level, you want them on board all the way along the line. Now the other thing is that I think part of what Mr. Gundersen wanted in his version of this bill and part of what was in the original ISA, is the horizontal component. When you find a problem, then you begin to look sideways and find out why that problem exists and what departments were involved and so on. And that almost automatically leads to issues that have some safety relevance.</p>
<p>February 26, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 176B</p>	<p>[Track 9 00:00:42] RAY SHADIS: I think at the bottom line is that the Senate of the Vermont Legislature, the New Hampshire Legislature, the congressional team, congressmen from New Hampshire and Massachusetts, plus about 10,000 signatories have all called for an independent safety assessment.</p>
<p>February 27, 2008 Senate Finance Committee Hearing on S. 364 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 177A</p>	<p>[Track 10 00:00:57] BILL RUSSELL: The very last page will show you that we also intend to change the title, an act relating to an independent audit rather than a safety assessment. The first several pages, which describe the comprehensive vertical audit, have really not been changed. They've just been some editorial changes in a few places and they're marked in bold so you can see what they are. They're deleting the word safety and putting the word emergency, things like that.</p>
<p>March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator</p>	<p>[Track 4 00:04:14] SENATOR CUMMINGS: The other thing that has hit the news in the last few weeks are, probably the last year, is that the general – Federal General Accounting Office, not a particularly radical</p>

2008 Legislative History Appendix, Volume I

<p>Cummings Pl. Ex. 180A</p>	<p>group, has expressed concern about the NRC’s tendency to, kind of, rubber stamp reports that come from the nuclear energy industry. There’s been concerns that they are not doing adequate follow-up, they’re not double-checking these things. So the result has been that there is a fair amount of public concern about the adequacy of the NRC’s inspection process.</p>
<p>March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Cummings Pl. Ex. 180B</p>	<p>[Track 5 00:01:34] SENATOR CUMMINGS: The second set of the bill directs the Department of Public Safety [sic] to empanel a group of experts. They can be from the NRC, they can be – it is possible that some pieces or all of the NRC’s recent safety can be adequate for this, but that as part of their preparation to report to us for our licensing that they empanel a group of experts to conduct this comprehensive vertical analysis and this can also be used as part of their public engagement process for Act 160.</p>
<p>March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Miller Pl. Ex. 180C</p>	<p>[Track 5 00:03:54] SENATOR MILLER: I was just curious, um, have other states not trusted, totally trusted, the Nuclear Regulatory Commission and have they embarked on similar state proscribed audits?</p>
<p>March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Cummings Pl. Ex. 180D</p>	<p>[Track 6 00:04:28] SENATOR CUMMINGS: A large number of this may well be able to be taken from the NRC safety study that they just did with the oversight and check that. We’re trying to deal with two things here. One is the concern that the NRC is too quick to rubber stamp and the public, kind of, distrust, you know, well this is a safe plant but the cooling tower is falling down, calls into question the whole, kind of, culture of safety that might be going on.</p>
<p>March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Starr Pl. Ex. 180E</p>	<p>[Track 7 00:03:37] SENATOR STARR: Secondly, I’m wondering if this is really a study to determine the safety of Entergy and Vermont Yankee or is it a way to maybe chase them out of the State because it’s going to be so costly that maybe it would be cheaper just to mothball the place and not operate.</p>
<p>March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Starr Pl. Ex. 180F</p>	<p>[Track 8 00:01:51] SENATOR STARR: And it’s, you know, the folks here that support wind power, I mean, they’re dreaming. And it’s nice to have dreams and think that everything is going to be sunshine and rosy when the turbines turn and we’re going to get our power from there, but it’s not going to happen. It’s either going to come from a fossil fuel plant, nuclear, hydro, wood chips, things of that</p>

2008 Legislative History Appendix, Volume I

	nature and I really question – I, I know we want to make sure that this plant is safe and, but I – the process that we’re going through to get there is very cumbersome and I really question whether we need a process that cumbersome.
March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Cummings Pl. Ex. 180G	[Track 8 00:04:32] SENATOR CUMMINGS: Well, having a nuclear incident will severely tarnish that public image and we’re also cognizant of that.
March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Cummings Pl. Ex. 180H	[Track 9 00:02:59] SENATOR CUMMINGS: And, you know, the real issue we’re dealing with is the public credibility. The NRC’s credibility has really been called into question.
March 12, 2008 Senate Floor Debate on S. 364 Testimony of Senator Choate Pl. Ex. 180I	[Track 9 00:03:36] SENATOR CHOATE: Thank you. Mr. President, I have another question. I have no qualms with making sure that the plant is safe for the – all of our plants in the state are safe.
March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Cummings Pl. Ex. 180J	[Track 11 00:03:30] SENATOR CUMMINGS: Yes, this could be a crisis. But again, if we license it and it’s not reliable, and something happens in two years and it has to shut down, we are in the same place. And if something really bad happens, the economic impact on Vermont – Pure Vermont Green and all the rest of it – could also be dramatic.
March 12, 2008 Senate Floor Debate on S. 364 Testimony of Senator McDonald Pl. Ex. 180K	[Track 12 00:02:22] SENATOR MCDONALD: There are a couple things that this plant has going for it that are commendable. It has a... It operates 99 percent of the time it’s supposed to, which means it only calls in sick once out of every 100 days, and that’s an enviable record for any nuclear plant, and certainly is a – is high marks to the one that we’re seeking to have reviewed.
March 12, 2008 Senate Floor Debate on S. 364 Statement of Senator Coppentrath	[Track 15 00:02:03] SENATOR COPPENRATH: Yes, thank you, Mr. President. I support the review of the safety of Vermont Yankee. I believe there are errors of fact in the bill that I would like to offer an amendment for a third reading.

2008 Legislative History Appendix, Volume I

Pl. Ex. 180L	
March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183A	[Track 1 00:00:24] SENATOR CUMMINGS: It's actually a pretty simple little bill. Okay, what this bill does, in essence, is the governor has called for an independent safety assessment, the congressional delegation has called for an independent safety assessment, the Legislature has talked about the need to do something. What this bill does is define what we mean by an assessment. And we talk about a reliability assessment because safety is not within our purview.
March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183B	[Track 1 00:02:57] SENATOR CUMMINGS: All of that has led, you know, to some discomfort here with just taking their word that, that this plant is safe. When you add to that the fact that this plant is now asking to be licensed for 50 percent beyond its original life, and it is operating at 20 percent of its – 120 percent of its design capacity, the concern gets stronger.
March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183C	[Track 1 00:04:33] SENATOR CUMMINGS: But – so what we did is, we took all the advocates and sat them down with our drafting people and said – because there seems to be... Everybody has a different name for the same thing, and we seem to, you know, we're all talking about roughly the same kind of inspection, but the terminology is different. And so we settled upon what's called a comprehensive vertical analysis.
March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183D	[Track 1 00:06:14] SENATOR CUMMINGS: There's a very good chance that a lot of this work has already been done by the NRC.
March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183E	[Track 1 00:09:25] SENATOR CUMMINGS: And I believe it requires the department to be in charge of doing this. They have also said they want to have a safety inspection, so we're saying, okay, this can be your safety inspection, both for Act 160, but, you know, if you're doing a – you know, everyone wants a safety inspection.
March 20, 2008 House Natural Resources	[Track 1 00:10:57] REPRESENTATIVE: Madame Chair, I'm a little confused. You

2008 Legislative History Appendix, Volume I

<p>Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183F</p>	<p>started off your presentation stating that we don't have oversight for safety of the nuclear plant.</p> <p>SENATOR CUMMINGS: Right.</p> <p>REPRESENTATIVE: And I thought I just heard you say that the department wants a safety inspection and we want it. I mean, are we, are we saying we're going to forget that we do not have oversight for safety, the NRC does, and we're going to take and forget all that and we're going to do a safety, or is this an independent reliability inspection?</p> <p>SENATOR CUMMINGS: No. This, this bill speaks exclusively of reliability. And the governor keeps talking about safety. Our issue has been that we don't have jurisdiction there.</p>
<p>March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183G</p>	<p>[Track 1 00:11:45] SENATOR CUMMINGS: Now, there's some interconnection between reliability and safety. If it's not reliable, it may not be safe. It may be reliable and emitting too many things into the air it's not supposed to, but – and be unsafe.</p>
<p>March 20, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 183H</p>	<p>[Track 1 00:29:35] REPRESENTATIVE: But we're finding that, that there's a lack of confidence in the NRC in the public's eyes.</p>
<p>March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183I</p>	<p>[Track 1 00:31:02] SENATOR CUMMINGS: But that cooling tower ran in every paper. That was aft – you know, who missed what? At the very least it, it speaks to the culture of safety at the plant.</p>
<p>March 20, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Senator Cummings Pl. Ex. 183J</p>	<p>[Track 1 00:32:42] REPRESENTATIVE: I guess there's overlap between safety and reliability— SENATOR CUMMINGS: Yes. REPRESENTATIVE: -- because you're talking about the cooling towers as being a safety issue, and yet this study is a reliability</p>

2008 Legislative History Appendix, Volume I

	<p>study.</p> <p>SENATOR CUMMINGS: Right. The cooling towers were not. NRC told us, well, that wasn't their fault because the cooling towers are not in their domain because they don't have to do with safety. They had to do with, they're part of the plant, and somebody didn't keep them up. So if the plant is not reliable, it's probably not safe, and if it's not safe, it's probably not reliable.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 185A</p>	<p>[Track 1 00:06:25] BILL RUSSELL: One of the issues of which I think you're getting to Joe, is that there is a major cleavage around the issue of terminology. There is one group of witnesses that wanted the terminology to be that of the Nuclear Regulatory Commission and if we use their terminology, cite the specific sections of the Code of Federal Regulations, which set out what the NRC would do if they were going to do this kind of an audit. And some of the witnesses were even explaining that unless we did it through the NRC and with NRC terminology it wouldn't work. The other side of that was that the other group of witnesses, which the committee eventually sided with, was that, that was the problem. If you use NRC terminology it would just be then the NRC might be inclined to say, "Oh, sure, we've done that before, we have recipe for an ISA, or a DET" or whatever and pull it off the shelf and that was not satisfactory to those who ultimately voted on this bill.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 185B</p>	<p>[Track 1 00:13:01] BILL RUSSELL: I think you may have to check with them. But the discussion centered around, we don't want an ISA, which is a Independent Safety Assessment, which is what the NRC would normally do in this situation and maybe even doing. We want the design and methodology for inspecting this plant that answers the questions that we're interested in doing and, as I'll get to the section, but it includes possibly the department would empanel a team to do it and they're directed to invite the NRC to participate and use them as we can if they wish to, if they choose to participate. Otherwise, what we're doing here is setting out what we think is the methodology, what we think is the questions they need to answer, in terms that are developed for the Vermont Yankee plant.</p>
<p>March 25, 2008 House Natural Resources Hearing on S. 364 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 185C</p>	<p>[Track 1 00:20:18] BILL RUSSELL: We're intending this to be a reliability and, uh, assessment. I think that if there's safety risks or emergency risks, they should be identified and they should be discussed and they should be part of the audit.</p>

2008 Legislative History Appendix, Volume I

<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 185D</p>	<p>[Track 1 00:26:02] REPRESENTATIVE ERRECART: You know, I think we're getting in the shaky ground already, because as I remember, Sarah, who has looked into this more than I have, is concerned about us using the language relicensing and tells us we should use the language continue operations, so yeah.</p> <p>BILL RUSSELL: I think the governor himself uses the term relicensing. He has requested the NRC to do an investigation.</p> <p>REPRESENTATIVE ERRECART: When he talks to federal contractors, relicensing.</p> <p>BILL RUSSELL: Yeah, right, and so I think that if that term is improper, we're all using it.</p> <p>REPRESENTATIVE 1: I guess, maybe I have to back track, and I apologize because I may be a little bit thick on this, but, this is looking for an evaluation of the systems of operations of the plant, independent of the NRC.</p> <p>BILL RUSSELL: Let me turn you to the section.</p> <p>REPRESENTATIVE 2: Maybe we should go over, just have Bill go through, the whole thing.</p> <p>REPRESENTATIVE 1: I can't – Unfortunately, I can't get beyond these rules, because what I can't do, as an operations person, I'm looking at this thinking, well, yeah, it makes sense that if you've got a regulatory body like the NRC and they're doing an evaluation, why aren't they doing this stuff? What is it about the NRC evaluation that it makes it so different that we want to create a whole new evaluation process and not even use the terminology.</p> <p>BILL RUSSELL: Well ...</p> <p>REPRESENTATIVE 1: For somebody who is not familiar with the NRC process and if they're supposed to be looking holistically at this plant and making a determination of its safety and otherwise, why wouldn't you be assessing the facility's operational performance in giving risk perspectives and appropriate – that are appropriate? You see what I'm saying? I can't get beyond – it's not my concern of NRC doing it or with them preempting any other decisions or anything like that. I can't move beyond what these words say and wonder if we're trying to</p>
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2008 Legislative History Appendix, Volume I

	<p>say that these things wouldn't necessarily be looked at by the NRC in one of their ISA evaluations. Are we saying that?</p> <p>BILL RUSSELL: We're saying that this is what we want in our evaluation. There are people who will tell you that the NRC will not do it this way. I am not expert enough to do that and you need to hear from some of these people.</p> <p>REPRESENTATIVE 1: Okay.</p> <p>BILL RUSSELL: Some of them are very critical of the NRC. Some of them strongly support the NRC.</p> <p>REPRESENTATIVE 1: Okay. I guess that's what I need to know.</p> <p>BILL RUSSELL: Yeah</p> <p>REPRESENTATIVE 1: So that is, we are necessarily saying, or at least somebody is saying, that the type of audit that should have the same outcome, which is a risk assessment, would not necessarily take these same type of steps to reveal, and coming to that conclusion, and that's what our concern is, which is why we're doing an independent one using specific steps that would be taken in an evaluation.</p> <p>BILL RUSSELL: That's right.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 185E</p>	<p>[Track 2 00:38:19] REPRESENTATIVE: Because, this is my concern, you know, I didn't get involved at all with 160. I haven't gotten involved at all with any politics around the nuclear energy thing – any of that – but this is my concern. If the elephant in the room is that we don't trust the NRC to do the type of audit that would assess whether or not Vermont Yankee is a risk, is putting us at undue risk, then should we be concerned about whatever they're doing all over the nation? I mean, I guess I don't understand this. I don't understand why we are completely re-evaluating a process that not only Vermont should be concerned about, but what about the rest of the nation. Are we really that concerned? And if that is the case, then what are we doing about – you know, fine so we worry about Vermont Yankee. What about — what else is there out there?</p>
<p>March 25, 2008 House Natural Resources</p>	<p>[Track 1 00:40:11] BILL RUSSELL: There, they heard testimony and you can hear</p>

2008 Legislative History Appendix, Volume I

<p>Committee Hearing on S. 364 Testimony of Bill Russell, Chief Legislative Counsel Pl. Ex. 185F</p>	<p>testimony, about the adequacy or the ability of the NRC’s typical investigations in ISA or DET to actually come up with this depth of an investigation. I’m not going to be able to evaluate that, but there are others who will do that and who will say that the NRC has not met expectations in a lot of ways. There are obviously many defenders of the NRC.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 185G</p>	<p>[Track 1 00:51:33] REPRESENTATIVE: I would ask the same question that Cathy has asked about the NRC, but I would ask it from a different angle and that angle would be, I scratch my head when I have an oversight authority that has never, ever in the history of their entire being, has it ever said no to a plant. That would bother me. I hope that would bother you too. And I would like to maybe have some different viewpoints or more independence when it talks about going forward with the plant.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186A</p>	<p>[Track 1 00:00:01] SARAH HOFMANN: Welcome. Thank you very much for having me. It’s nice to be back in here. I’m Sarah Hofmann. I’m the director for Public Advocacy for the Department of Public Service and I’m actually here today to kind of give an overview of preemption. And so I have a handout. It’s called Preemption from 50,000 Feet but I did think about calling it Everything You Wanted to Ask about Preemption but Shouldn’t.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:01:39] SARAH HOFMANN: The other thing that I wanted to just kind of – I don’t want to scare people that they can’t talk about things, but I want to make you aware that actually what you talk about, you are making a record and I know that we have something called the state liaison with the NRC. And that person is usually finding me documents or things that I need and she called up in the middle of Senate Finance hearings and asked that I send CDs of the recordings from that committee. Now, the only reason I can think that she would want to do that is the NRC was also wondering about preemption. So, just know that what you do – and this isn’t to scare you, this is to just say, be careful with what you’re talking about in this room. Be careful about the record you’re making and later on you’ll see why I think that’s actually important.</p>

2008 Legislative History Appendix, Volume I

<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186B</p>	<p>[Track 1 00:05:20] SARAH HOFMANN: I'm not trying to scare you today. What I'm trying to say is, it's still good to be careful about what your language is and the example I gave is that we have a state liaison with NRC and that state liaison usually is getting me information. I need this document or I need that and I call this person and she gets it for me. But while this was in Senate Finance, she called me and said I want the tapes from two specific days where the ISA bill was being looked at and I – just like she gets me everything, I got them for her and the only thing — reason I can come up with that she would like to see those is a possible preemption claim. So it's not to say you can't talk about things, just be aware of language, that reliability is something to talk about where maybe safety is not. So we'll talk about why that is in a minute.</p> <p>REPRESENTATIVE 1: I want it to be clear. You said the tapes of a Senate Finance?</p> <p>SARAH HOFMANN: Yes, out of two days where testimony was being taken on the ISA bill.</p> <p>REPRESENTATIVE 2: And they complained? One of those days, the NRC itself testified.</p> <p>SARAH HOFMANN: That wasn't one of the days they wanted.</p> <p>MALE SPEAKER 1: It wasn't, huh? [Laughter]</p> <p>SARAH HOFMANN: I actually – when I got the tapes for them, I did make a copy and play it for myself as well. There's nothing wrong with that.</p> <p>REPRESENTATIVE 1: So you're saying ISA bill, you're referring to –</p> <p>SARAH HOFMANN: I think you're now calling it the —</p> <p>REPRESENTATIVE 1: S. 364.</p> <p>SARAH HOFMANN: -- S. 364.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah</p>	<p>[Track 1 00:10:09] REPRESENTATIVE: Is there a path that if there is a safety issue — the hypothetical, if there is a safety issue that clearly the federal government is not paying attention to and yet the State is not allowed. Is there a path to redress on that? I mean...</p>

2008 Legislative History Appendix, Volume I

<p>Hofmann, Department of Public Service Pl. Ex. 186C</p>	<p>SARAH HOFMANN: The best thing I can tell you, Representative, is that the path is that obviously you are concerned about the reliability of the plant and often times reliability and safety go hand in hand. If that plant can't be run safely, it might mean that it's down because of maintenance or something else and in that instance, you are worried about the economics because Vermont may have a very good stake in the economics of that plant in terms of reliability, so you're talking about reliability. The court would say, and I'm all speculating, remember this, that it is a safety issue, if we aren't talking about reliability, that a safety issue is clearly within the purview of the Nuclear Regulatory Commission and would preempt a State law. But you could also have a state law that's hinged on reliability.</p> <p>REPRESENTATIVE: OK.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186D</p>	<p>[Track 1 00:12:30] SARAH HOFMANN: In terms of the bill itself, you know there are things that are very – when I look at it –</p> <p>REPRESENTATIVE: Suspect?</p> <p>SARAH HOFMANN: Well, that are very obviously, when you say emergency core cooling pumps, that's a safety part of the plant and so you know, that kind of specificity might get you a preemption claim. But beyond that, I don't have a detailed analysis for you of this particular bill. That would come at a later time.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186E</p>	<p>[Track 1 00:22:05] REPRESENTATIVE: You mentioned a cooling system. Is that what you just said earlier that would be considered – possibly could be considered safety?</p> <p>SARAH HOFMANN: It's called the emergency core cooling system and that is definitely a safe — in the NRC world, that would definitely be a safety component of the plant.</p> <p>REPRESENTATIVE: Because it is an action that takes place after the production of the nuclear power?</p> <p>SARAH HOFMANN: And if there were an accident, these emergency core cooling pumps are critical in any kind of radiological event.</p>

2008 Legislative History Appendix, Volume I

<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186F</p>	<p>[Track 1 00:24:20] REPRESENTATIVE: This is real rough logic but are you saying in your last paragraph about emergency planning and management that if there was an inadequate plan, that would be irrelevant to the continued operation of it? SARAH HOFMANN: Actually, just to be clear, these are now the board’s words on this last page. These are the board’s words and – I’m trying to think about any – I’m pretty good at tying almost everything to reliability.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony Sarah Hofmann, Department of Public Service Pl. Ex. 186G</p>	<p>[Track 2 00:07:40] REPRESENTATIVE: What if down the line the Legislature doesn’t act, an unlikely but, just didn’t act at all, what would happen with that CPG would it – SARAH HOFMANN: The board can never issue a CPG. REPRESENTATIVE: The default would be no continuation? SARAH HOFMANN: I’ve said it’s kind of like a pocket veto. If you don’t act, then the plant cannot continue running beyond March 21, 2012.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186H</p>	<p>[Track 2 00:08:20] SARAH HOFMANN: Just so you know what the federal process is, if you turn the page... This process the, the NRC process, has been going on for quite some time. In January 2006, Entergy actually filed with the NRC for their license extension. And both the Department of Public Service and the New England Coalition got contentions into that process, it’s called the Atomic Safety and Licensing Board, it’s like a judicial panel, of things that we were concerned about in terms of license renewal. The department actually settled it’s particular contention out but we had adopted the New England Coalition’s and they had adopted our contentions, so we’re all still parties to the case. The most significant action that’s happened recently is in February, at the end of February, the final safety evaluation report was issued. That’s from the NRC staff and it’s a 800-page report about the plant and they found that they thought it should be relicensed. And the most recent action is the Advisory Committee on Reactors Safeguards, that also has to sign off on this, actually did find that, that the plant could be operated during the license extension period.</p>

2008 Legislative History Appendix, Volume I

<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186I</p>	<p>[Track 2 00:14:41] REPRESENTATIVE: Because I would think that the corporation very well could say no, we're talking about a court case, it's going to be resolved in court, not by the Legislature. If, if we're preempt – basically we're preempted when they get that license but no matter what we do, I mean, unless I'm seeing something wrong.</p> <p>SARAH HOFMANN: Actually, you are not preempted. You still have those traditional state roles that you've always had, which is you could say on economic reasons, environmental reasons that are not related to radiological health or safety, need for the power, alternatives, those are all traditional state – economics, I sorry, the big one I was forgetting, you could actually still make the decision based on those traditional state roles in regulation and not be preempted by the NRC. You just can't have it be on radiological health and safety or anything connected to it.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186J</p>	<p>[Track 2 00:15:53] SARAH HOFMANN: If we were actually preempted, that would be the absolute worst case scenario. It would be sitting in our State, running, and we would not get the benefit from it.</p> <p>REPRESENTATIVE 1: And Vermont Yankee would be getting a lot richer than they are if they contract with us, well, theoretically if we could negotiate a good contract.</p> <p>REPRESENTATIVE 2: Can this find its way into the court systems if we say no as a Legislature?</p> <p>SARAH HOFMANN: Yes.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186K</p>	<p>[Track 2 00:19:20] SARAH HOFMANN: [L]et's say there was evidence next year at the Legislature – this is not the case, this is not the case – that there's something wrong with the steam dryer. We've had many cases over the steam dryer. But let's say it really looked like you had lots of evidence indicating the steam dryer, which is not a safety component, had real problems and it looked like it was going to die, it was going to fail, and that unless they change that steam dryer, we had no, even with a favorable power purchase agreement, we had no reason to believe that the plant would run for us to take advantage of it, the plant was not reliable enough. So you could do it – that would be within the traditional rate-making regulation – regulatory authority of a State to do</p>

2008 Legislative History Appendix, Volume I

	<p>something like that. It could be something though, it could be like, it could be an environmental thing that has nothing to do with radiological health and safety. It could be that cooling towers are killing birds and bats and, you know, I know you know something about that. So, you know, but would it be the continued operation that is killing those birds and bats? You know, it could be something that's nothing to do with radiological health or safety but it is an environmental impact.</p>
<p>March 25, 2008 House Natural Resources Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186L</p>	<p>[Track 2 00:21:17] SARAH HOFMANN: [T]he interesting thing is Pacific Gas and Light [sic] is about California not wanting to have anymore new nuclear power plants. There's always a debate as to whether building one or relicensing one is under the same standard.</p>
<p>March 25, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 186M</p>	<p>[Track 2 00:23:34] SARAH HOFMANN: But in terms of that law, the Act 160, Entergy to my knowledge has never entered into a Memorandum of Understanding. What they have entered into Memorandum of Understanding on is that they have to come back to the Public Service Board for a CPG to operate after March 21, 2012.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Uldis Vanags, State Nuclear Engineer Pl. Ex. 187A</p>	<p>[TRACK 1 00:11:01] REPRESENTATIVE: What you're talking about was, though, after what takes place in the reactor. You're talking about the ability to produce power and I'm trying to get the reliability, and even though we're not supposed to talk about safety, but you've got the reactor over here is generating the power.</p> <p>ULDIS VANAGS: Right.</p> <p>REPRESENTATIVE: And then it goes through these steam things you're talking about.</p> <p>ULDIS VANAGS: Yeah.</p> <p>REPRESENTATIVE: And after that when these cracks occurred, is shooting into where it turned the turbines?</p> <p>ULDIS VANAGS: Yeah, I think, I think what you're getting at is, you're right, what this.... The steam generators are a nuclear safety component.</p>

2008 Legislative History Appendix, Volume I

	<p>REPRESENTATIVE: Okay.</p> <p>ULDIS VANAGS: They're not a non-nuclear safety component, they're a nuclear safety component because they isolate the nuclear side of the reactor to the secondary side, the non-nuclear. So you have leaks in your steam generator, you will be releasing radioactive isotopes.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Uldis Vanags, State Nuclear Engineer Pl. Ex. 187B</p>	<p>[Track 1 00:14:48] ULDIS VANAGS: [W]ith regard to Maine Yankee, you can pretty much, when I talk about Maine Yankee, you can accept that everything is nuclear safety. Everything about what happened at Maine Yankee was a nuclear safety issue and that's what made it so serious. In fact, there was nothing that wasn't nuclear safety. It was entirely. They didn't have any – there wasn't an issue with Maine Yankee with regards to the reliability of their plant and so forth when they were operating, but they ran into some problems that were nuclear safety-related problems that, you know, caused us to have great concern in Maine, so.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Uldis Vanags, State Nuclear Engineer Pl. Ex. 187C</p>	<p>[Track 1 00:21:50] REPRESENTATIVE: I'll ask the question because you've already answered later but as I go through S. 364, I'm under the impression that much of the ISA that we see in here was based on the ISA that was done at Maine Yankee. Is that true or not? ULDIS VANAGS: From my opinion, it is.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Uldis Vanags, State Nuclear Engineer Pl. Ex. 187D</p>	<p>[Track 1 00:46:38] REPRESENTATIVE: So how do we even get here if the NRC can be the only one that does this? ULDIS VANAGS: Well, that's why you have to work with the NRC.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Uldis Vanags, State Nuclear Engineer</p>	<p>[TRACK 1 00:51:45] REPRESENTATIVE: During a vertical, I'm going to look at looking each component, top to bottom, whether it's safety, whether it's operational or what, whatever – ULDIS VANAGS: Yeah.</p>

2008 Legislative History Appendix, Volume I

<p>Pl. Ex. 187E</p>	<p>REPRESENTATIVE: Compare it to the original design, the original concept of how it was started.</p> <p>ULDIS VANAGS: Yeah.</p> <p>REPRESENTATIVE: And then I would look for any waivers, any deviations that have occurred since operation, correct?</p> <p>ULDIS VANAGS: Right.</p> <p>REPRESENTATIVE: And then I would see how did they affect where I am today. We are following this, right?</p> <p>ULDIS VANAGS: Yeah, you're absolutely right. You're making sure that any changes you made were incorporated into the safety analysis and the design.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 188A</p>	<p>[Track 1 00:03:17] REPRESENTATIVE: The question is about, on the last page, it's the last bullet point, about the cable separation, and if it's a safety system, I don't understand why the NRC missed it. I'm sure... I don't know the history of the plant, but that would be a question that I want to know, especially since it's, according to Uldis, a safety situation – safety consideration.</p>
<p>March 26, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Uldis Vanags, State Nuclear Engineer Pl. Ex. 188B</p>	<p>[Track 1 00:08:50] ULDIS VANAGS: You know, the relevance of what happened at Main Yankee, with regard to this ISA and here today is because people are asking for an ISA, something that extensive, and what I wanted to bring to the committee is the very serious nature of the safety problems that Maine Yankee was experiencing and why that really happened, how that came to be. Vermont Yankee is experiencing a very different situation than Maine – what happened at Maine Yankee, very different. And, at the same time, there are calls for an ISA.</p>
<p>March 27, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Jay Thayer, Entergy Nuclear Operations, Inc. Pl. Ex. 189A</p>	<p>[Track 1 00:27:21] JAY THAYER: [S]ince we've owned those plants, the plants have operated very well. The forced outage rate has gone from 25 percent which... let me just put it simply. Roughly 25 percent of the time, those plants were not generating electricity. That forced outage rate now has gone down to less than two percent, which is among the top performers in the U.S. The plants, their equipment problems, have gone down.</p>

2008 Legislative History Appendix, Volume I

<p>March 27, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Jay Thayer, Entergy Nuclear Operations, Inc. Pl. Ex. 189B</p>	<p>[Track 1 00:47:12] JAY THAYER: Yes. In fact, we have, I have. And one of the things I believe... Did you get... we performed a side by side comparison of the bill.</p> <p>REPRESENTATIVE 1: We have not received it. Did you receive it?</p> <p>JAY THAYER: Do you have that?</p> <p>REPRESENTATIVE 2: Did you get it? No.</p> <p>JAY THAYER: One of the things that our engineering staff did, and we will get this to you, is we said, a lot of what's in the bill is being performed on a regular basis over the course of the NRC's inspection, regular inspection and oversight program. We wanted you to see that. Okay, has this been looked at? Yes, it has.</p>
<p>March 27, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Jay Thayer, Entergy Nuclear Operations, Inc. Pl. Ex. 189C</p>	<p>[Track 1 00:49:38] JAY THAYER: I think from the standpoint of the scope of the audit and that's the reason – we made this point with Senate Finance and actually they asked us to do this comparison – and I think from the standpoint of scope, without any disrespect intended, I think it's plowing old ground. I don't think it's really asking new questions. I think it's asking questions that the NRC asks on a routine basis.</p>
<p>March 27, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 189D</p>	<p>[Track 1 00:01:10] REPRESENTATIVE: Well, but that wasn't my real question. My question was, if they could miss something so big as that, there might be other kinds of things in different reactor plants that also could have the same problem. And how do... If NRC missed that one on this issue, and now they have taken care of that issue, what about this issue over here that they haven't taken care about that could also lead to some problems. And I'm worried that, you know, we have all these wonderful inspection things. But this one's missing, as it was in that case.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Richard Saudek, attorney and consultant to the Vermont</p>	<p>[Track 1 00:00:55] RICHARD SAUDEK: My name is Richard Saudek, I'm a lawyer here in Montpelier, and I was asked by the president pro tem and the Finance Committee to look into the reorganization of Entergy and make any recommendations for legislation that I might.</p> <p style="text-align: center;">***</p>

2008 Legislative History Appendix, Volume I

<p>Legislature Pl. Ex. 193A</p>	<p>[Track 1 00:12:31] RICHARD SAUDEK: I think it's fair to say in today's market with Yankee running the way is running, which is at, last year, 99 percent capacity factor, which is just incredible. And I might say parenthetically that Entergy has – appears to have run that plant very well and its other plants very well. I mean I think they run from 90 to 99 percent capacity on all of these merchant plants.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 194A</p>	<p>[Track 1 00:00:00] RAY SHADIS: And the purpose of my testimony today is to offer some encouragement that the Legislature put forward a requirement for an extraordinary inspection of the Vermont Yankee Nuclear Station. Let me preface this by stating that, where I'm coming from it really doesn't matter whether one believes the plant is safe or not, whether one supports nuclear power or Vermont Yankee or not. The fact I think everyone is aware of is that public assurance is shaken in the safety of the plant and also shaken in terms of the oversight of the plant – both State oversight and NRC oversight. And I believe that the question at hand is whether it is worth it to engage in any extraordinary effort to be restore that assurance. Certainly, if – whether we believe the plant is safe or not, I don't think anyone of us would want to go forward with the suspicion that it may be unsafe.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 194B</p>	<p>[Track 1 00:18:32] RAY SHADIS: I have... I have one comment with respect to the bill in hand. And it has to do with the difficulty in getting the Nuclear Regulatory Commission to make any substantial changes or moves. They have the philosophy right now, their approach right now, is that the reactor oversight process that is in place is self-checking, is self-determining, and if there were any problems, that that they would emerge. Therefore, they do not want to conduct any kind of extraordinary examination. They think that, you know, that it's not justified, for one thing. And secondly they don't see the need to put a check on their own work. I will tell you that right now, that the Joint Committee on Commerce and Energy of the U.S. Congress is investigating NRC for their oversight failures.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition</p>	<p>[Track 1 00:20:31] RAY SHADIS: And I would recommend the addition of language that reflects the bill that was introduced by Senator Sanders in the spring of 2007, the bill that was introduced by the New York Congressional delegation, including Hilary Clinton, also in 2007, and the bill that was introduced by Representative</p>

2008 Legislative History Appendix, Volume I

<p>Pl. Ex. 194C</p>	<p>Hinchey of New York in 2006. And all of those Congressional bills call for an examination on the scale and scope of the 1996 Maine Yankee Independent Safety Assessment. While your bill may not use the word “safety” in a sense that we want a safety inspection, the key words here are in terms of scale and scope.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 194D</p>	<p>[Track 1 00:27:19] RAY SHADIS: I guess what I’m suggesting is that, that if you want to try to involve NRC, which I think is an excellent idea because they are the only people that can enforce any remedies for any defects that may be found.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 194E</p>	<p>[Track 1 00:29:30] RAY SHADIS: And so if there’s some language that would say that the – the department shall seek, you know, that NRC perform this and failing that, then, you know, the department will conduct itself and/or assess, you know, Vermont Yankee – however you would approach that conditional language, I think it’s essential. If you... I mean, if you go to the trouble of putting together a team and you have the cooperation of Entergy and you have private contractors and so on, and you do an extraordinary examination at great cost and NRC then proceeds to ignore the findings of your examination and does not enforce the remedies, federal preemption will put you out of the ballpark. You are specifically prohibited from regulating a nuclear power station.</p> <p>REPRESENTATIVE: Now Ray, what happens – so in this process, let’s say the scenario you just said comes to fruition, we – the Legislature then next year gets a report back from this – I don’t know what we are calling it – this group of three independent folks.</p> <p>RAY SHADIS: Right.</p> <p>REPRESENTATIVE: And they report back that, in fact, the scenario you presented happened. And then the Legislature decides then it doesn’t support the continued operation based on this feedback. What happens then?</p> <p>RAY SHADIS: Well, I think it would be, my own guess, is at that point you would be into a, you know, face-to-face confrontation over the question of federal preemption.</p>

2008 Legislative History Appendix, Volume I

<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 194F</p>	<p>[TRACK 1 00:32:37] RAY SHADIS: So, for example, in the bill there's talk about an examination of the emergency core cooling system, high-pressure injection, low-pressure injection. It would be remarkable to have findings come out of that inspection that wouldn't bear the tag "safety." So, you know, I think that, as a hedge, certainly, and in order to strengthen the possibility here for enforcement, it would be much preferred if NRC could be the inspecting agency.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Ray Shadis, New England Coalition Pl. Ex. 194G</p>	<p>[Track 1 00:42:00] RAY SHADIS: But NRC, the key point here, is NRC... they need watching and they need oversight and they need to be brought to these issues by citizen action, by legislative action, or state action. Otherwise, it will be business as usual. The... I mean, if we had confidence that NRC was doing the deep, thorough kind of inspection that Vermont Yankee needs and that they were solidly enforcing their regulations, then there really would be no need to ask for this examination.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Peter Bradford, Vermont Law School Pl. Ex. 195A</p>	<p>[TRACK 1 00:13:54] REPRESENTATIVE EDWARDS: Okay, Mr. Bradford, I think I have permission now. My name is Sarah Edwards. I'm on the committee and I serve the district, the district of Brattleboro. And I want to switch back to the other bill that this committee is looking at and that is S. 364, which deals with the comprehensive vertical audit, it's called. PETER BRADFORD: Yes. REPRESENTATIVE EDWARDS: I think we were doing that in an effort to avoid safety language. Perhaps you've seen the bill.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Peter Bradford, Vermont Law School Pl. Ex. 195B</p>	<p>[Track 1 00:16:11] PETER BRADFORD: The other thing that it addresses is the really dismaying, but I think justified, lack of confidence that the public has in today's Nuclear Regulatory Commission. And I want to be fairly precise in what I'm saying about that. There are a lot of capable, honest people working at the NRC and on the staff of the NRC. But the leadership of the Commission in recent years and the oversight that the Congress has imposed on the NRC has been entirely in one direction and that is in the direction of taking the economic interest of the nuclear industry into account to a much higher degree than I think was the case when I was there, and to an extent that at the very least public confidence is compromised, and it's certainly possible that safety is, too. The</p>

2008 Legislative History Appendix, Volume I

	<p>Commission has become much too caught up in the exuberance of the so-called nuclear renaissance and what it can do to promote it at the expense of its basic job, which is concerned with the public health and safety. There's just no end of troublesome events and episodes that substantiate that over the last five to 10 years. So, given that background, I do think it's important that the state stand its ground on insisting that there be a separate assessment done and an assessment that really has some independence from both the NRC and the plant operators.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Peter Bradford, Vermont Law School Pl. Ex. 195C</p>	<p>[Track 100:20:37] REPRESENTATIVE ERRECART: We've heard a lot about how the NRC, you know, finds defects, says it's okay, and that's normal course of operations there at NRC. Can you talk a little bit more about what you understand of what's happening at NRC now? I mean, we're really caught here that we're preempted on safety so we can't do that.</p> <p style="text-align: center;">***</p> <p>[Track 1 00:21:22] PETER BRADFORD: Well, you know, the NRC's preemptive jurisdiction is an unusual one, that is, no other major industrial facility has that status. Oil refineries don't have it. Paper mills don't have it. Other types of power plants don't have it. It dates back to 1957 when Congress provided that the States should have no power to set radiation health and safety standards and of course that was a very different era as far as whether the expertise existed it in the States. It was a very different era in the sense that nuclear secrets were much more closely held in Washington. There was a lot concern about the interplay of all nuclear matters, nuclear weapons, and those just aren't factors today, but we still have this hangover legislation from that era. It wouldn't hurt, in my view, for Congress to take a look again at whether there's still a justification to have that preemptive status. But right now, I agree that it is the world you have to work with.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Peter Bradford, Vermont Law School Pl. Ex. 195D</p>	<p>[Track 1 00:24:31] PETER BRADFORD: The chairman of the Senate committee with jurisdiction over the NRC writes quite openly in a book that came out about six years ago about his role at a time when he felt the NRC was being too strict toward the nuclear industry, calling in the chairman and saying that he was going to cut the agency's budget by a third if it didn't relax the level of surveillance that it was imposing on nuclear power plants and he quite happily...</p> <p>REPRESENTATIVE EDWARDS: What's the name of the book?</p>

2008 Legislative History Appendix, Volume I

	<p>PETER BRADFORD: ...recounts that indeed the NRC heeded his admonition and did relax and he didn't have to cut its budget by a third. But that kind of oversight sends a pretty clear message to the staff about what's expected and what kind of behavior will improve their careers and what kind of behavior will set their careers back. And when it happens over and over and is reflected also in the choices the president makes about who gets to go on the commission and what kinds of backgrounds they have, you wind up with a culture and a tone that are not the one that certainly that I'd like to see there and not the one that, it seems to me, is supportive either of public confidence or of a strong safety culture in the agency. So that leaves entities like yours trying to decide on the future of a plant like this with a real dilemma and, it seems to me, getting an independent take on the status of the plant is important in two respects. One, just as straightforward information to you and the other as a message to the NRC that you really want something better from them than what they've been showing.</p>
<p>April 3, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Peter Bradford, Vermont Law School Pl. Ex. 195E</p>	<p>[Track 1 00:36:07] REPRESENTATIVE MITCHELL: Mark Mitchell here. Simplistic question, you think an independent assessment is necessary at this time and would have value? PETER BRADFORD: Well, yes. If I were sitting where you folks are, I would want an independent assessment because I think the NRC has done so much in the last decade to forfeit its credibility.</p>
<p>April 4, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Arnie Gundersen, Fairewinds Associates Pl. Ex. 196A</p>	<p>[Track 1 00:51:35] REPRESENTATIVE ERRECART: You caught my attention with the turbine blowing up. So you said, if this turbine were to really, basically, fall apart... ARNIE GUNDERSEN: Break. Yeah, blow up, yeah. REPRESENTATIVE ERRECART: ...then the pieces would go into the control room, which could endanger the lives of the operators and thereby not be able to operate the plant. ARNIE GUNDERSEN: Well, that's the least of your worries REPRESENTATIVE ERRECART: Okay. Tell me what your worries are. ARNIE GUNDERSEN: The pieces could hit the electric wires that run the plant. And I mean, the plant should shutdown</p>

2008 Legislative History Appendix, Volume I

	<p>without the operators. But if this thing blows and the pieces go into the control room, it would disable the safety systems. And even if the operators were alive, they couldn't get in to shut it down and essentially, it would have a lobotomy.</p> <p>REPRESENTATIVE ERRECART: And I assume that a turbine is a very expensive thing. Is that one of the systems that is included in this bill and in the vertical audit to review whether this turbine might...</p> <p>ARNIE GUNDERSEN: To get back to... that was the next tier of things to look at, is the low pressure turbine.</p>
<p>April 8, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 197A</p>	<p>[Track 2 00:15:59] REPRESENTATIVE: I don't have a lot of confidence in previous tests from the NRC. That's the issue. I think we've heard testimony to that end, that the NRC is not in the greatest of favor throughout the country, and so if we are trying – and also the issue about safety. Administration is calling it a safety assessment. We're trying to avoid that word.</p>
<p>April 9, 2008 House Natural Resources Committee Hearing on S. 364 Statement of Representative Klein Pl. Ex. 199A</p>	<p>[Track 2 00:35:36] REPRESENTATIVE KLEIN: I don't—I don't know why we're having this particular discussion, because I don't think there's any disagreement. There's certainly not a disagreement amongst many of us in the Legislature, Senator Sanders, Peter Welch, Senator Leahy, and the governor, that Vermonters' confidence in that plant and in the NRC has been shaken, and they want some sort of analysis that will provide that confidence back. I would, for example, disagree with Uldis's last statement about that that's — that may have been the original written mission of the NRC, but I think we've even heard testimony in this room that that mission has been questioned, that they are more interested in making sure that plants operate on an economic level. I don't think that when an independent oversight agency is supposedly — has the sole responsibility for the safety of an operation, I don't think anybody bats a thousand forever, and that's what the NRC seems to be doing. So, I have questions about it, and I have problems with it, and that's why we have a bill in front of us, and we're supposedly, hopefully, creating a bill that's going to create some sort of independent assessment.</p>
<p>April 9, 2008 House Natural Resources Committee Hearing on S. 364</p>	<p>[Track 2 00:42:30] ED ANTHERS: Do we have a right to ask for a decent audit? Yes. In other areas, the Legislature has, at times, determined that federal regulations are inadequate to protect Vermonters, and has</p>

2008 Legislative History Appendix, Volume I

<p>Testimony of Mr. Ed Anthes, Nuclear Free Vermont Pl. Ex. 199B</p>	<p>implemented stronger safeguards.</p>
<p>April 9, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 200A</p>	<p>[Track 2 00:25:42] REPRESENTATIVE ERRECART: I'm surprised to read this, this excerpt, because it sounds stronger than I had remembered and I'm very worried here, because I've heard the word safety used in this room today, even, and absent a waiver, I'm very concerned that that's something that is preemptive, and I'm so worried about the stakes if we're wrong, because if we're wrong, and we do something that is preemptive, it's possible that what we do is just thrown out. And I'm very concerned about – you know, I'm just worried that the stakes are so high that being bold and saying we have jurisdiction over any safety thing in the whole world, that the stakes are so high, it would just not be smart to do that.</p>
<p>April 9, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Christopher Kilian, Conservation Law Foundation Pl. Ex. 200B</p>	<p>[Track 2 00:28:30] CHRISTOPHER KILIAN: And I guess the first point I would make is that FERC and the NRC don't really have constitutional authority to issue proclamations with regard to the scope and application of the United States Constitution. They are not Article III courts under the federal Constitution, and only the courts have the authority to issue those kinds of rulings. So to the extent the NRC said anything about this? It wouldn't have any force in effect.</p> <p style="text-align: center;">***</p> <p>[Track 2 00:30:06] CHRISTOPHER KILIAN: But I do think that's important to remember. That the NRC does not, from our perspective anyway, have constitutional authority to issue any proclamations with regard to the supremacy clause.</p>
<p>April 09, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of James Moore, Vermont Public Interest Research Group Pl. Ex. 201A</p>	<p>[TRACK 1 00:26:42] JAMES MOORE: I think that there are probably a lot of similarities because my guess would be that confidence in the FAA and the public is tanked because the FAA was cited for being too cozy with the industry and for allowing problems to go unaddressed.</p> <p>REPRESENTATIVE: So without saying that, that's exactly what some people in this body and this state are saying about the NRC. They're too cozy with the nuclear power plants so we're going to</p>

2008 Legislative History Appendix, Volume I

	<p>break this up and we're going to go and find out and get to the bottom of it. Is that what we're doing? And I haven't heard anybody say that yet, but you can sure draw that conclusion, listen to all the testimony we've been hearing. They're more concerned with putting out the megawatts assumption, the NRC is, that the plants puts out megawatts, than it is for the safe operation of that power plant.</p> <p>JAMES MOORE: I don't want to speak for or pretend to, you know, speak for the general public here...</p> <p>REPRESENTATIVE: No. Speak for VPIRG.</p> <p>JAMES MOORE: But for VPIRG, we absolutely lack that confidence in the NRC and absolutely would like the state to step in.</p>
<p>April 18, 2008 House Natural Resources Committee Hearing on S. 364 Pl. Ex. 211A</p>	<p>[Track 5 00:13:57] REPRESENTATIVE 1: And maybe I'll ask Uldis. This is the question about the NRC coming and saying, "We do safety. That's what we do. That's what we're... that's all we do." What we see is... if I could have Uldis come in and sit. You know, the systems you have listed here that you're looking for reliability are all overlapped by safety. And that these are the folks who go in and they're looking at the system and it's... there's the... unless... correct me if I'm wrong. There's no difference. There's no...</p> <p>REPRESENTATIVE 2: Let's see.</p> <p>REPRESENTATIVE 3: It's an easy fix. You just say if necessary.</p> <p>REPRESENTATIVE 1: Okay. I'm just... but I'm just getting... but it is ...it...</p> <p>REPRESENTATIVE 2: Tell me where we exactly are on the bill?</p> <p>REPRESENTATIVE 1: Sorry.</p> <p>REPRESENTATIVE 2: If you can point...</p> <p>REPRESENTATIVE 1: Okay. I'll...</p> <p>REPRESENTATIVE 2: You've got to tell...</p>

2008 Legislative History Appendix, Volume I

	<p>REPRESENTATIVE 2: Well, I know, but this... I think this is an important point and it's... if...</p> <p>ULDIS VANAGS: But maybe hold as you could...</p> <p>REPRESENTATIVE 1: Maybe not. Maybe Uldis.</p> <p>ULDIS VANAGS: If this is something, like, for the record, Uldis Vanags, Department of Public Service, division of engineers. I just... from last week's conversation, when I went home, I really was thinking about what I heard here and I think there is a lot of confusion about safety and reliability and David Lew was talking about it. And I thought to myself 'cause I heard... I heard, you know, the thought that... that a team could be put together that we're just going to look at reliability. And that... the areas of the plant that are just reliability are very few at Vermont Yankee. Anytime you go in to the plant, you're looking at the system that that has reliability function or you know, area... area that you're judging, like the generator or the turbine, which is not a nuclear safety item, but a reliability item, but it has a direct relationship to the plant, to the reactor. It'll shut down the plant if something goes wrong. So that's what David Lew was trying to explain, is that, they don't go looking at the generator, or anything like this, but there's a direct relationship between that reactor and that generator. And so, if you go in and look at the generator, you will be going into the reactor building looking at – going through nuclear safety systems, the reactor protective system, which is connected to the generator. So, you ... they're not isolated systems. They're intertwined, just about – there's very few that are not. So, if you, you, well, so, to look at reliability, you will be looking at nuclear safety also in most cases and certainly what's listed in here are mostly nuclear safety systems.</p>
<p>April 18, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 212A</p>	<p>[Track 1 00:01:48] SARAH HOFMANN: And so, all three of these I'm suggesting are inserted into the draft five that you have in front of you to just make it clear to everyone that we care about reliability, reliability, reliability. So that's the point of these. I've actually been talking with Rebecca Ellis at the Attorney General's office who's helped me with these insertions.</p>

2008 Legislative History Appendix, Volume I

<p>April 18, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Sarah Hofmann, Department of Public Service Pl. Ex. 212B</p>	<p>[Track 1 00:02:27] SARAH HOFMANN: And it does say some things that I know sometimes are difficult to say, which are that, you know, it's been a reliable source of generation. But it has been for the most part.</p>
<p>April 18, 2008 House Natural Resources Committee Hearing on S. 364 Testimony of Deputy Commissioner Rich Smith, Department of Public Service Pl. Ex. 213A</p>	<p>[Track 1 00:13:16] REPRESENTATIVE 1: I have always wanted, and I always read this, as an independent inspection team that did not include one inch of any nuclear NRC member. RICH SMITH: I understand that. REPRESENTATIVE 1: Okay? And I think from my feelings of safety and for my constituents' feeling of safety. RICH SMITH: Reliability. REPRESENTATIVE 2: We're not doing safety. REPRESENTATIVE 1: Reliability. I feel that needs to be done.</p>
<p>April 30, 2008 Comm. of Conference Pl. Ex. 219A</p>	<p>[Track 2 00:29:16] LEGISLATOR 1: I think our concern was, our testimony is that, the NRC does a lot of things but it has a different terminology than the terminology used by some of the other folks, that in fact a lot of this might have been done and just called a different thing, and we were really looking at the panel to be able to say, "Okay, this is avoid cost and duplication of effort." We didn't want to reinvent the wheel. We just want to make sure this, you know, the spokes had all been checked. LEGISLATOR 2: I think that was our same concern and I think by not having specific language of the NRC, it gave the panel, you know, a pretty broad stroke to evaluate whether they were going to accept whatever parts or all of the NRC report and whether it was necessary to add to it or not add to it and if it was going to truly be an independent panel, then they would make that decision.</p>