UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ENTERGY NUCLEAR VERMONT YANKEE, LLC LLC and ENTERGY NUCLEAR OPERATIONS, INC.	)	
Plaintiffs,	)	
v.	)	Civil Action No. 11-cv-99
PETER SHUMLIN, in his official capacity as GOVERNOR OF THE STATE OF VERMONT; WILLIAM H. SORRELL, 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.	)	

SUPPLEMENTAL DECLARATION OF SETH G. PARKER IN FURTHER SUPPORT OF DEFENDANTS' OPPOSITION TO PRELIMINARY INJUNCTION

Seth G. Parker declares as follows pursuant to 28 U.S.C. § 1746:

1. I submit this Supplemental Declaration in response to the reply declaration of Edward Kee, filed on May 31, 2011 (ECF Doc. No. 46-6). While I dispute the conclusions and characterizations of my initial declaration (ECF Doc. No. 39-38) contained in Mr. Kee's reply declaration as a general matter, below I briefly address two discrete claims raised in his reply declaration that were not addressed in his original declaration.

<u>Seabrook / Green Mountain PPA</u>

2. In his reply, Mr. Kee argues that the recently announced long-term power purchase agreement ("PPA") between Green Mountain Power ("GMP"), a current purchaser of power from Vermont Yankee, and Seabrook Station nuclear power plant in New Hampshire "confirm[s]" that Entergy Vermont Yankee ("ENVY") is suffering "actual and imminent" harm from lost power contract opportunities due to the uncertainty about the plant's future. Kee Reply

¶ 16. The PPA was announced on May 24, 2011 (Kee Ex. 33), the day after my initial declaration was filed.

3. There are at least three problems with Mr. Kee's claims regarding the GMP-Seabrook PPA. First, the redacted GMP customer bill announcement he refers to (Kee Ex. 34) provides two reasons that GMP did not enter into a contract with Vermont Yankee: (i) "the price and other terms were not sufficiently attractive"; and (ii) the risk that Vermont Yankee will not operate beyond March 2012. The importance of the price and other terms not being sufficiently attractive is supported by a news article on the GMP-Seabrook PPA in the Burlington Free Press on May 25, 2011 (attached as Parker Ex. 18): "At least at the start, the 4.7-cent-per-kilowatt hour price is lower than what Vermont Yankee was offering." Moreover, the second reason GMP cited to its customers, Vermont Yankee's post-March 2012 operating risk, would not be resolved by granting a preliminary injunction. Therefore, the GMP-Seabrook deal does not demonstrate "actual and imminent" harm that could have been remedied by issuing a preliminary injunction.

4. Second, the GMP-Seabrook PPA highlights the flaw in Mr. Kee's claim, at ¶ 56 of his Initial Declaration, that "long-term electricity purchase agreements may have higher prices if the Vermont Yankee Station is closed. . . . [and that] [t]he electricity purchase agreements that Vermont electric utilities would enter into with other suppliers would likely have higher prices than the current electricity purchase agreements with Entergy Vermont Yankee." Based on my review of the publicly available version of the PPA (attached as Parker Ex. 19), GMP will purchase "Energy, Capacity, and Attributes."[1] As shown on page 44 of the PPA, the energy price for 2012, 4.66 ¢/kWh, is less than the ENVY- Vermont Electric Co-operative first year contract price of 4.9 ¢/kWh (*see* initial Parker Dec. ¶ 17). The low energy price of this new

[1] The Attributes are defined on page 2 of the GMP-Seabrook PPA as various credits associated with Seabrook's generation.

GMP-Seabrook PPA undermines Mr. Kee's claim that, absent Vermont Yankee, utilities' PPAs with other suppliers "would likely have higher prices."

5. Third, the fact that GMP entered into this PPA with Seabrook does not prevent ENVY from entering into long-term contracts with other buyers in the ISO-NE market. Indeed, the GMP-Seabrook PPA demonstrates that generators can sell power across state borders. While GMP may have locked up 60 MW of supply under this PPA, its estimated peak load for 2011 is approximately 368 MW which should give it additional opportunities to enter into long-term contracts.[2] In sum, the GMP-Seabrook contract does not demonstrate "actual and imminent" harm that the requested preliminary injunction could avert, and it undercuts Mr. Kee's claim that PPA prices are likely to climb if Vermont Yankee retires in March 2012.

Financial Risk

6. At ¶ 17 of his reply declaration, Mr. Kee claims that selling electricity into the short-term market (as opposed to under a long-term contract) will entail "[e]xposure to short-term market price risk" that "causes financial risk and imposes costs on Entergy Vermont Yankee." This concept of market risk causing financial risk and imposing costs on ENVY was not covered in Mr. Kee's initial declaration, and his reply provides no evidence to support this claim or specify the nature of the cost.

7. In assessing the cost, if any, of this "financial risk" to Plaintiffs, however, one must account for Vermont Yankee's small size relative to Entergy's overall business. First, Vermont Yankee is the smallest of the six nuclear plants in Entergy's non-utility merchant ("Wholesale Commodities") business. Its capacity is listed on page 203 of Entergy's 2010 Form 10-K as 605 MW, equivalent to 10.2% of Entergy's Wholesale Commodities combined nuclear and non-

[2] *See* relevant excerpt of GMP 2007 Integrated Resource Plan, attached as Parker Ex. 20.

nuclear portfolio.[3] Second, according to pages 24 and 33 of Entergy's Fourth Quarter 2010 Earnings Report, the Wholesale Commodities segment accounts for 26.2% of Entergy's consolidated assets, 22.3% of Entergy's consolidated revenues, and 38.5% of Entergy's consolidated net income.[4] Based on Vermont Yankee's size, Vermont Yankee represents between approximately 2% and 4% of Entergy's assets, revenues, and net income.[5]

8. Mr. Kee does not explain how any additional market risks would materially affect Vermont Yankee's costs. Generally, financial risks incur financing costs, *e.g.* costs of equity and debt capital. However Vermont Yankee does not issue equity or permanent debt; Entergy provides those funds, and Vermont Yankee does not have any significant financing costs that could be affected by additional market risk.

9. Moving up one level in the corporate structure, it appears that Entergy's Wholesale Commodities business segment does not issue equity or permanent debt either. Only 1.2% of Entergy's total long-term debt is attributed to the Wholesale Commodities business segment. *See* Parker Ex. 22 at 25. Thus, the corporate entity that might be affected by higher financing costs would be Entergy Corporation, Vermont Yankee's parent. However, consistent with ¶ 7 above, any impact on Entergy's financing costs would be limited by Vermont Yankee's small size relative to Entergy's overall business.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Boston, Massachusetts on June 13, 2011.

Seth G. Parker

[3] *See* Parker Ex. 21 at 203.

[4] Entergy's Fourth Quarter 2010 Earnings Report is attached as Parker Ex. 22; the percentage calculations are attached as Parker Ex. 23.

[5] The respective values are 2.7%, 2.3%, and 3.9%. Those calculations are reflected in Parker Ex. 23.