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## Vermont vs. Vermont Yankee

*Should states or the rubber-stamp NRC decide whether nuclear plants continue to operate?*

By [Michael Blanding](#)

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**T**he Vermont Yankee Nuclear Power plant sits on a peaceful bend of the Connecticut River, where jays call and herons dive lazily over sun-dappled

water. There's something ominously familiar, however, about the tower of Vermont Yankee's reactor, which has the same design as those that melted down last spring at Fukushima in Japan. And just a day before that tragedy, the Nuclear Regulatory Commission (NRC) approved Vermont Yankee's request to operate for another twenty years past the forty years for which it was designed.

The scene was anything but peaceful last fall up the road in Brattleboro, where that decision has been challenged in

court by the Vermont government, which has fought for nearly two years to shut down the plant. The ruling, expected soon, could have a profound effect not only on Vermont but also on dozens of other states where aging nuclear plants will be applying for relicensing. And it could set a precedent that will determine who gets a say in whether plants continue to operate: the states in which they reside or the federal government, which has been notoriously chummy with the industry it regulates.

The fight over Vermont Yankee goes back to 2002, when Louisiana-based Entergy Corporation purchased it. In exchange for state approval of the sale, Entergy signed a memorandum of understanding (MOU), agreeing that in order to renew its license past March 21, 2012, it would require a certificate of public good from Vermont's Public Service Board. And in 2006, when the plant increased its power output, it agreed that relicensing would require legislative approval as well.

Soon, however, a stunning parade of missteps raised deep suspicions about Entergy's ability to safely operate the plant. First, in 2007, one of its cooling towers collapsed dramatically, spewing water into the river and causing a 50 percent loss of power; then, that same year, Entergy proposed a misguided plan to spin off Vermont Yankee and five other plants into a highly leveraged new company called Enexus, which was immediately decried by legislators. The nail in the coffin of public support was driven in January 2010, when Entergy announced it had discovered radioactive tritium leaking into the groundwater. Company officials first testified under oath

that the plant didn't have any underground pipes from which the waste could leak. Later, however, not only did the company admit that the pipes exist; an NRC whistleblower revealed that tritium had leaked from them in 2005. Subsequent tests showed that the level of tritium was below that considered harmful, but Entergy's credibility was shattered. An incensed State Senate pulled the plug, denying approval for license renewal in February 2010. Entergy sued, saying the state didn't have the authority to shut the plant down since it was refusing renewal on the grounds that the plant was unsafe. According to federal law, only the Nuclear Regulatory Commission has the power to close plants because of safety concerns.

The two sides faced off in September at the federal courthouse in Brattleboro, a small room above the post office. Brattleboro may be small, but it ranks with Berkeley and Ann Arbor as one of the most activist communities in America, and dozens of protesters were marching outside by 7:00 in the morning, lining up to squeeze into a courtroom already crammed with the dark suits of Entergy's executives and lawyers.

The company's lawyers called few witnesses, relying instead on an unusual three-hour closing argument in which Entergy attorney Kathleen Sullivan played clip after devastating clip of legislators twisting themselves in knots not to use the word "safety" in order to avoid being pre-empted by Washington. "If it mentions safety issues, technically the state is pre-empted from handling those," says one legislator in a typical exchange over drafting

legislation about the plant. “We might be able to come up with another term for safety,” says another. “OK, let’s find another word,” says the first. Sullivan pounced on such exchanges. “Just because you move the headstones doesn’t mean the bodies aren’t still there,” she said. “It doesn’t change the purpose to change...the name...or to clean up the language.”

In every case where the legislature pointed to another concern, such as reliability or environmental or economic effects in the event of a nuclear accident, it was nothing more than a “pretext” for the main concern of safety, said Sullivan. Because the plant sells its power on the open market, the state had the right simply not to buy power from Vermont Yankee if it was really concerned about reliability. “If you don’t want nuclear power to be part of the mix when you turn on the lights, don’t buy from us,” she said. “You don’t need to shut down Vermont Yankee.”

Vermont assistant attorney general Bridget Asay tried to stop the bleeding, arguing that it was impossible to divine the intention of 180 legislators from listening to a few clips of debates. More important, Entergy officials made binding commitments when they signed the MOU in 2002 and agreed to legislative approval in 2006, said Asay. “They understood full well it was the legislature that would be making the decision about operating after 2012.” To support its position, Vermont presented several previously confidential documents, including a 2008 letter to legislators from Entergy’s former vice president of operations, Jay Thayer, in which he urged them to carefully consider the decision on relicensing, stating

specifically, “This will require approval by the Federal Nuclear Regulatory Commission, the Vermont Public Service Board, and the legislature.”

In another document, Entergy’s executive vice president, Curt Hebert, wrote a memo to his boss, CEO Wayne Leonard, in which he detailed public worries about the plant that went beyond safety concerns over the tritium and the cooling tower. Among them, he said, there was deep skepticism about Entergy’s integrity after the underground pipe and Enexus scandals, as well as concerns about whether Entergy would pay the cost of decommissioning when the plant finally did close. By far the state’s best witness, however, was Peter Bradford, who had served as an NRC commissioner under President Carter. After going through a list of avowed purposes for closing the plant, including reliability, economics and aesthetics, Sullivan said, “You would agree that a state couldn’t use this list of things you specify as a pretext to regulate safety?” He replied, dryly: “In a way your question is asking me if rich people can rob a bank. Vermont’s got a long list of reasons for doing what it did, and it doesn’t need to go to pretext. Sure, rich people can rob banks, but why would they?”

Throughout the trial, the elephant in the room was the NRC. After all, the Vermont legislators wouldn’t have had to wring their hands over safety if the NRC was adequately monitoring the plant. But it’s become increasingly clear that the public has lost faith in the agency, and several independent monitors have shown that it has fallen down on the job. Despite its staff of 4,000, the NRC audits only 5

percent of activities at plants in a given year, and since 2000 it has approved all of the sixty-two applications it has received for relicensing, despite increasing concerns that plants are being dangerously approved past their original thirty- to forty-year lifespans. According to a 2007 report by its own inspector general, the NRC has been little more than a rubber stamp in the process, often cutting and pasting information from company applications, word for word, into its approvals.

Other watchdogs have noted a shift away from enforcement. The number of civil penalties issued by the agency has dropped by 80 percent since the late 1990s, according to the *New York Times*. Worse, an AP report last June found that when plants have failed to meet guidelines, the NRC has simply lowered its standards. According to the Union of Concerned Scientists, nearly half of all reactors fail to meet fire safety guidelines enacted in 1980, and only 60 percent are in compliance with voluntary standards on groundwater pollution. “The last major accident in the United States was Three Mile Island [in 1979]. When you are dealing with low-probability, high-consequence events, it’s easy to become complacent,” says David Lochbaum, director of the UCS’s Nuclear Safety Project and a former nuclear engineer. The last time the agency was effective was under Commissioner Shirley Ann Jackson in the mid-1990s, he says. “Afterwards, the NRC has backed off imposing its regulations and stopped imposing penalties on plant owners.”

After Fukushima, the NRC convened a task force to reform

its regulations; in July it issued a report advocating a sweeping industry overhaul, including many changes that advocates have been pushing for decades. They are hopeful that the disaster in Japan will provide momentum for reform, but some are wary, given the industry's influence over the agency and in Congress through lobbying and campaign contributions. "Having a list of recommendations to reduce vulnerabilities is only half the equation; the other half is follow-up," says Lochbaum. "Ten years from now if we are still looking at a long to-do list with all those recommendations, we haven't gained much."

In the meantime, states like Vermont are put in the difficult position of having to respond to the safety concerns of citizens. Lack of trust in the NRC was a persistent theme in the clips that Entergy attorney Sullivan played in court. "The NRC in my opinion has not been the best friend of the people," says one legislator. "I trust the 180 people up here...a lot more than I trust the NRC."

A ruling from Judge J. Garvan Murtha is expected soon. No matter what he decides, the verdict will be appealed, probably all the way to the Supreme Court. And with it, the fate of other nuclear plants hangs in the balance. In New York, Governor Andrew Cuomo has long vowed to shut down the plant at Indian Point, which is also owned by Entergy and whose two reactors are up for relicensing in 2013 and 2015. The state has already challenged federal authority by denying the plant the permit it needs to operate, arguing that the environment is a valid state concern and not pre-empted by federal authority. A similar

argument may be made in other renewal fights, such as in Massachusetts, where Attorney General Martha Coakley has formally appealed the NRC's decision to relicense Entergy's Pilgrim plant. When it comes to the question of how much authority a state has to close a nuclear plant within its borders, as Vermont goes, so may go the nation.

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**Michael Blanding** Michael Blanding ([www.michaelblanding.com](http://www.michaelblanding.com)), a fellow at the Edmond J. Safra Center for Ethics at Harvard University, is investigating institutional corruption in the nuclear power industry.

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