



Vermont Yankee

Should an individual state be able to decide whether or not there will be an active nuclear power plant within its borders? And whether it should or not, would federal law allow it?

These are questions that I am left with after a recent trip to Vermont. Any day now, a federal judge will decide whether the State of Vermont should be enjoined from ordering the closure of the Vermont Yankee plant.

Vermont is not the only state grappling with the wisdom of nuclear plant closure. New York Governor Cuomo wants to shut down the troubled Indian Point facility, and various groups in California have contested the relicensing of the Diablo Canyon Nuclear Plant, perched as it is amidst various earthquake faults.

Several years ago, Entergy, which also owns Indian Point, acquired Vermont Yankee. This past March, the federal Nuclear Regulatory Commission extended the plant's operating life for an additional 20 years beyond 2012. But the state legislature voted last year to prohibit commercial operation beyond the original license period without prior legislative approval. The plant owners are trying to block that law.

The main argument for the plaintiffs is that jurisdiction related to nuclear safety rests with the Nuclear Regulatory Commission and that states are therefore preempted from taking any action in response to safety concerns. Vermont argues that it is prompted by economic considerations, not safety. This way, Vermont is employing a strategy successfully used by the State of California in defending its nuclear moratorium law before the U.S. Supreme Court. California will not allow the siting of new nuclear plants until the nation has deployed a proven strategy for the long-term storage of high-level radioactive waste. In that case, the Court agreed that although nuclear waste storage may primarily be a safety issue, the state is within its authority when it acts to protect its citizen from the economic consequences of

a waste storage crisis.

Vermont may prevail with an economic argument in the current case. However, can a state act on nuclear safety concerns without stepping on federal toes? Maybe. The NRC has undisputed jurisdiction to decide when a nuclear plant is safe and when it isn't, and to deny operating authority to a plant that doesn't make the grade. If a state tried to tell a nuclear operator what it needed to do in order to operate safely, it would clearly be out of bounds. Yet with any standard the NRC might adopt, some risk of nuclear accident will remain. For instance, the state has already concluded that groundwater in the area is contaminated with tritium releases from the plant. The consequences to the state of an accident, no matter how low the probability, could be devastating — think large-scale evacuation, contamination of agricultural land, loss of potable water, economic crisis, and power shortages. In other words, think about Japan in 2011. Vermont has likely balanced those risks against the benefits of a continued power supply from the plant and concluded that its citizens are better off without it.

Shouldn't Vermont be able to exercise that choice? I think it could do so without interfering with the NRC's ability to monitor the safety of those plants that are in operation. Consider, for instance, the Nuclear Regulatory Commission's mission statement, which is "to [enable](#) the nation to safely use radioactive materials for beneficial civilian purposes," not to require it. But don't expect Vermont, or any other similarly-situated state to make that argument before a judge. States know that the economic argument might be a winner, but a state response based on safety concerns is untested.