JAMES H. DOUGLAS
Governor

State of Vermont
OFFICE OF THE GOVERNOR

May 22, 2009

The Honorable Donald G. Milne
Clerk of the House of Representatives
State House
Montpelier, VT 05633-5401

Dear Mr. Milne:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H.436, *An Act Relating To Decommissioning Funds of Nuclear Energy Generation Plants*, without my signature because of my objections described herein.

Many Vermonters are struggling as a result of the current recession and all are facing pressure from rising costs. While I do believe there are opportunities for operational improvements at Vermont Yankee, this legislation does nothing to increase protections for Vermonters, ratepayers or our state's economy. Rather, H.436 threatens our economic recovery by unnecessarily increasing electric rates for consumers and businesses. Further, this legislation substitutes an objective process with political calculations, it breaks a promise made by the state of Vermont to a private entity and it exposes taxpayers to certain litigation.

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The safe and reliable operation of Vermont Yankee nuclear power station remains the most important issue surrounding the plant's future. To support that goal, my administration is working diligently with the Nuclear Regulatory Commission (NRC), stakeholders and the plant's owners to ensure the highest standards are achieved. Additionally, in the relicensing case currently underway, the Public Service Department (DPS) has filed a plan to provide funding into the decommissioning fund that adequately protects Vermont interests while not excessively penalizing the owners.

The NRC has completed a lengthy examination and review of the conditions in the plant, and concluded that, subject to some modifications in procedures, it meets the standards necessary to ensure safe operation moving forward.

Similarly, the State of Vermont recently completed a Comprehensive Reliability Assessment of the plant. With the help of consulting experts and under the scrutiny of a Public Oversight Panel, the plant's reliability has been deemed to meet the standards necessary for continued reliable service if the recommendations of the Comprehensive Reliability Assessment and Public Oversight Panel are carried out by Entergy Nuclear Vermont Yankee.

As we ensure the highest levels of safety and reliability at Vermont Yankee, we must also consider the conditions under which Vermont Yankee is allowed to conduct business. It is critical, therefore, that we consider the financial benefits that are provided by the plant's operations – namely, affordable power, a favorable revenue sharing agreement, and economic support for the region and state.

Finally, we must not lose sight of the fact that Vermont Yankee provides a source of power with relatively low carbon emissions, thus helping to limit our greenhouse gas emissions. Now that the cost of carbon is a part of the price that consumers pay for electricity, losing this source of power from our regional portfolio would likely lead to higher costs for ratepayers.

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Vernon, Vermont has been home to the Vermont Yankee nuclear power station since 1972, and it currently provides approximately one-third of the state's power. Initially owned by a consortium of Vermont utilities, Vermont Yankee was later sold to Entergy Corporation in 2002 during which time all the financial parameters of the plant's operation until March 21, 2012 in relation to the state were established by order of the Public Service Board (PSB). The plant was sold for $180 million and the output of the plant was sold back to Vermont utilities under an economically favorable long-term power purchase agreement.

It was understood that Entergy, pursuant to an NRC finding of fund adequacy, would not make financial contributions to the decommissioning trust account and that the SAFSTOR method of extended decommissioning was permissible. The PSB ruled that there was significant value to ratepayers by getting a lower price for power as opposed to continued contributions to the fund and in transferring the risk of increased decommissioning costs away from ratepayers.

Beyond the sale and associated benefits to ratepayers, Vermont Yankee supports the region with over 600 high paying jobs, helping to infuse money into the local, state and regional economies, as well as additional tax revenue for the state. The Clean Energy Development Fund receives millions of dollars each year from Entergy to fund renewable projects throughout the state. In addition to local impacts, Vermont Yankee is responsible for providing power to neighboring states through the regional grid.

Our state has one of the greenest and cleanest energy portfolios in the nation. Our forested lands remove more carbon than we produce. Vermont is a leader in reducing carbon emissions because of our efforts in encouraging energy efficiency and renewable energy production, along with the power purchase agreements with Hydro Quebec and Vermont Yankee.

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At the end of the last biennium, the general assembly passed S.373, *An Act Relating to Full Funding of Decommissioning Costs of a Nuclear Plant,* which called for the total funding

for decommissioning of the Vermont Yankee nuclear power facility by 2012. At that time, I sent the legislation back without approval because the legislation was a substantial deviation from standards observed by nuclear power stations across the nation. It was clear that creating such a requirement for total decommissioning in 2012 would result in a significant increase in rates for consumers, and further threaten our already tenuous economic position.

Unfortunately, H.436 made little attempt to change the fundamental flaws in policy and substance in this iteration. Instead, it has aggravated the situation by creating unnecessarily burdensome financial pitfalls for electric ratepayers today and into the future and placing Vermont at great risk for civil liability. This legislation circumvents the existing quasi-judicial process and shortcuts an established fact-finding process, instead substituting legislative politics in their places.

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Our reputation as a state is on the line. Our willingness to honor our agreements not only goes to our future business relationships, but speaks volumes of the ethical standard to which we ascribe. During my many years of public service I have seen the consequences when the state attempts to go back on its commitments. I speak of the past power purchase agreements our utilities had with Hydro Quebec, and the attempts to undo them. When all was said and done, the state was required to honor its agreement, but our relationship with a valuable trade partner was damaged, and our motives suspect. It appears the lessons learned from that experience have been forgotten, or worse – ignored. Now I need to step forward and defend the actions of a previous administration that agreed to the use of SAFSTOR as an acceptable decommissioning strategy in the name of honoring the State's commitments.

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This legislation appears to have tried to avoid a breach of contract or franchise claim by making the full funding of the fund take place one day after the current license period ends. This attempt, however, is unlikely to be successful. Making the full funding provision date one day later, even if the plant shuts down, does not excuse the state from its obligations under the Memorandum of Understanding agreed to by preceding administrations. Attorneys for the State of Vermont have opined that the state will likely face litigation for breach of contract or breach of a franchise by Entergy if this legislation becomes law. Vermont Yankee's owners very likely would claim that, since the Memorandum of Understanding was breached, the current power purchase agreement is no longer valid, which would cost ratepayers up to $356 million.

The full funding language in this legislation, whether as a "balloon payment" or a "parental guarantee," would require substantial financial resources, all at once. This is problematic because the amount Entergy is required to pay into the decommissioning fund may come out of the power price we will receive for consumers from a new power purchase agreement. In other words, ratepayers will get a much less favorable price on the power. The requirements of H.436 severely threaten our goal of retaining the option for Vermont consumers

to get the best possible price for power generated by Vermont Yankee, subject of course to regulatory and legislative approval.

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H.436 does not achieve a greater level of accountability for Entergy. Rather, it is the original sale order, the NRC, and the current case on continued operation now before the PSB that are the means to achieve accountability. This legislation's approach is a direct threat to the Vermont ratepayer and our state's prosperity.

The department's plan currently before the PSB is a far more constructive approach that protects ratepayers. It calls for Entergy to make payments into the decommissioning fund over the course of 20 years instead of immediately. This approach preserves ratepayer benefits by lessening the effect on the power purchase agreement. Further, the department's plan mandates fund review and adjustments every two and a half years, allowing the fund to grow in a steady fashion over the license renewal period.

In contrast to the department's plan, this legislation has purposely removed the authority of the PSB to offer even a preliminary finding in this case. This approach appears designed to prevent the use of a venue that relies on objective fact-based proceedings, replacing it with biases and political consideration.

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It is clear that Vermont Yankee will eventually be decommissioned, whether in 2012 or afterward. How it is decommissioned is a question of great importance. This legislation's approach is to extract money in any way possible, creating a hostile business environment. I propose that we work together constructively, observe our own laws and procedures, and design a balanced solution that allows for all parties to benefit.

The question of Vermont Yankee's continued operation remains, and that should be decided by the regulatory process and legislative deliberation of the merits of an additional 20 years, not as an indirect result of ill-conceived legislation. Because this legislation threatens ratepayers, increases long-term electric rates, risks potential job losses, and creates unnecessary liability for the state – while failing to adopt a viable, workable solution – I cannot support this legislation and must return it without my signature.

Sincerely,

James H. Douglas
Governor

JHD/hsw