Plants (Final Report) at 12 (NUREG-1628, June 2000).

The likelihood therefore appears to be that, if the sale goes through, Entergy as the licensee will be responsible for decommissioning costs. Moreover, in the event Entergy does not meet that responsibility there is reason to believe that the federal government will assume it. In any case, Vermont ratepayers do not appear more likely to bear the cost of decommissioning if the sale goes through. Instead, they appear to be less likely to bear that cost than they would if the sale does not occur, since VYNPC will no longer be the licensee. There is no reason why a bankruptcy by ENVY would change this outcome.

D. State Monitoring and Control over Actions by ENVY

45. ENVY and the Department agreed on specific terms for cooperation, notification, and access to the VY station should the plant be sold to ENVY. The agreement is memorialized as the Memorandum of Understanding on Cooperation, Notification and Access Between Entergy Nuclear Vermont Yankee LLC and Vermont Department of Public Service for the Vermont Yankee Nuclear Power Plant (“Inspection MOU”). Exhibit VY-42 at ¶2 and Exhibit A.

46. Presently there are agreements in place between the Department and VYNPC as to the Department’s oversight; however, the new agreement provides enhancements, including the following:
   i) The Department will be granted access to specific performance indicator information, such as, maintenance request backlogs, event report backlogs, backlogs of review and resolution of industry issues, overall staffing levels, and uses of overtime. Review of these documents will assist in determining if cost cutting appears to be affecting aspects of operation at the plant.
   ii) The Department will be notified of, and granted the ability to attend, various plant-related meetings. This specific notification and authorization was not
specifically included previously.

iii) The Department will be granted access to computer data bases at the plant. This access was not specifically included previously.

iv) ENVY’s agreement to participate in Vermont State Nuclear Advisory Panel (VSNAP) meetings is established by the MOU. In former practice, VYNPC had always voluntarily participated in VSNAP meetings, but the MOU established ENVY’s agreement to such participation.

Sherman pf. 3/15/02 at 4-5.

47. The MOU provides that ENVY shall report to the Board and to the Department the status of the decommissioning funds and the latest NRC calculation of such responsibility at the same time as such report is required by the NRC. In addition, ENVY will make this information available to the public and will participate in a public discussion on the adequacy of the decommissioning funds at a meeting or some other forum to be determined in conjunction with the Department. VY-42 at ¶5.

48. Under the MOU ENVY will provide to the Department semi-annual reports of the decommissioning trust fund status, as reported to ENVY by the funds’ managers. ENVY will make available to the Department appropriate members of the Entergy Corporation Treasury Department to answer questions about such reports. VY-42 at ¶5.

49. ENVY shall update the site-specific decommissioning cost study at least once every five years with the first of these studies due to be completed no later than the fifth anniversary of the closing under the PSA and submit the results to the Board and the Department. Following completion of each study, ENVY shall (i) inform the public of the estimated cost of decommissioning which resulted from the analysis, and (ii) participate in a public discussion of the results at a forum to be determined in conjunction with the Department.
Exhibit VY-42 at ¶6.

50. ENVY shall obtain Board approval in the event it requests disbursement of funds from ENVY's Qualified Decommissioning Trust Fund or Non Qualified Decommissioning Trust Fund (each as defined in the PSA) other than: (i) for purposes of decommissioning VYNPS (as decommissioning is contemplated in ¶3 of the MOU), (ii) for payment of administrative expenses or (iii) for distribution of funds upon completion of decommissioning (including distributions contemplated under paragraph 3 of the MOU). Exhibit VYU-42 at ¶7.

51. ENVY agrees that the trust agreement with respect to its Qualified Decommissioning Trust Fund and Non Qualified Decommissioning Trust Fund will contain a provision incorporating paragraph 3 of the MOU and that such provision shall not be amended without Board approval. ENVY also agrees that it will give the Board and Department notice of intent to change any other provision of the trust agreement at least 30 days in advance of such change. Exhibit VY-42 at ¶8.

52. It is in the interest of the State of Vermont to monitor the decommissioning fund. First, since the VY Station is in Vermont, assurance of the ability to properly manage the residual radioactivity is a specific state interest. Second, since the potential exists for the sharing of excess decommissioning which may occur if decommissioning is delayed, the fund amount and management is an interest of the state. Sherman pf. 1/7/02 at 50.

53. If the Department and the Board have the ability to see what is happening with the decommissioning fund, the State will be able to take effective action to assure that the decommissioning fund is adequate. If the State has concerns, the State can go to the NRC to accomplish NRC action. The Department could also go to the Legislature and
create decommissioning abilities here in the state. Tr. 4/18/02 at 210-11 (Sherman);
Sherman pf. 3/11/02 at 6.

54. ENVY agrees that it must use its commercial best efforts to assure that the spent fuel is
removed from the VYNPS site in a reasonable manner and as quickly as possible rather
than stored at VYNPS. ENVY shall allow the Department to participate in the
discussions with DOE that involve VYNPS and to participate in the decision whether to
pursue the discussions or to litigate. Exhibit VY-42 at ¶11.

55. The MOU provides the Department the ability to exert an influence over any settlement
with DOE that involves spent fuel. There is no guarantee of how the Department's
influence will be accepted by ENVY. However, the Department has a good deal of
experience working in the area. Tr. 4/18/02 at 211-12 (Sherman).

56. ENVY could reject the Department's recommendation regarding any settlement with
DOE, but Entergy would not do so without careful thought and considering many factors.
Tr. 4/1/02 at 164 (Wells).

57. The MOU provides that the signatories to the MOU agree that any order issued by the
Board granting approval of the sale of VYNPS to ENVY and any Certificate of Public
Good ("CPG") issued by the Board to ENVY and ENO will authorize the operation of the
VYNPS only until March 21, 2012 and thereafter will authorize ENVY and ENO only to
decommission the VYNPS. Any such Board order approving the sale shall be so
conditioned, and any Board order issuing a CPG to ENVY and ENO shall provide that
operation of VYNPS beyond March 21, 2012 shall be allowed only if application for
renewal of authority under the CPG to operate the VYNPS is made and granted. Each of
VYNPC, CVPS, GMP, ENVY and ENO expressly and irrevocably agrees: (a) that the
Board has jurisdiction under current law to grant or deny approval of the operation of the
VYNPS beyond March 21, 2012 and (b) to waive any claim each may have that federal law preempts the jurisdiction of the Board to take actions and impose the conditions agreed upon in this paragraph to renew, amend or extend the ENVY CPG and ENO CPG to allow the operation of the VYNPS after March 21, 2012, or to decline to so renew, amend or extend. Exhibit VY-42 at ¶12.

58. Envy agrees that the certificate of public good it seeks from the Vermont Public Service Board is independent of any NRC approvals. If the NRC grants approval and the Board subsequently denies the petition for a CPG for ENVY or ENO beyond March 21, 2012, then ENVY and ENO will not operate the VYNPS beyond the current license. Tr. 4/1/02 at 189 (Wells).

59. The requirement and agreement that ENVY must return to the Board for a CPG in the event it seeks license approval is an element of local control which is improved by the proposed transaction. Sherman pf. 3/11/02 at 6.

60. The MOU provides for additional funds or other acceptable financial assurances by ENVY at the time of the evaluation of the decommissioning fund for NRC in connection with the post shutdown decommissioning activities report for the VY station. ENVY will provide the additional funds or other acceptable financial assurances as needed to ensure funding will be sufficient to accomplish decommissioning, including site restoration and spent fuel management. Exhibit VY-42 at ¶9.

61. The term greenfielding means to return a site to a condition near its original condition. Greenfielding or site restoration is not a safety issue, and therefore is outside of the NRC requirements for decommissioning. This would be an additional state standard to be met by ENVY in decommissioning the plant. Tr. 4/18/02 at 174-75, 179-82 (Sherman).
62. ENVY has made a commitment that, “Once the site is no longer used for nuclear purposes or non nuclear commercial, industrial or similar uses consistent with the orderly development of the site, Entergy would intend to restore the site by removing all structures and regrading and rescinding the property.” Sherman pf. 1/7/02 at 47 quoting a response by ENVY to an Information Request.

63. If the Board grants ENVY a CPG for the operation of the VY Station, ENVY will comply with all state requirements regarding decommissioning. Tr. 4/1/02 at 130-32 (Wells).

64. Vermont has had for more than 25 years a more stringent standard for the “off-site release” of radiation than the federal government requires. Basically the state regulation results in an off-site release level of 20 millirems per year rather than the federal limit of 25. Tr. 4/19/02 at 74 (Sherman); Vermont Health Department Regulations, Radiological Health Section, Part 5, Chapter 3, Subchapter 1, § 5-305B.

Discussion re State Monitoring and Control over Actions by ENVY

The above findings detail the significant enhanced monitoring and control provisions of the MOU and the inspection MOU that will increase Vermont’s ability to monitor and influence the behavior of the activities of ENVY as relates to its ownership of VYNPS. They also address many of the concerns raised about the potential loss of local control occasioned by the sale of the plant to a large out-of-state corporation. One of the most important of these enhancements is the agreement by ENVY to a condition in its CPG that it will not operate VYNPS beyond March 21, 2012, the end of its current operating licence, without prior Board approval. These enhancements are over and above what Vermont currently has with VYNPC and are a significant benefit of the sale. Please also see the legal discussion below in the section regarding the Board’s ability under the MOU to review continued operation of VYNPS beyond March 21, 2012.
E. Other provisions of the MOU

Power purchases:

65. The MOU states that the Parties recognize that VYNPC may desire to purchase and ENVY may desire to sell additional energy and capacity produced by VYNPS either at the end of the term of the PPA or during the term of the PPA in the event ENVY is able to produce additional energy and capacity at VYNPS through one or more uprates ("Uprate") of the facility.

(a) Within a reasonable period prior to the end of the term of the PPA, ENVY shall give VYNPC reasonable notice of the availability of the energy and capacity as a result of license extension and will provide VYNPC a commercially reasonable opportunity for a period of 30 days to negotiate on an exclusive basis its purchase thereof. In the event ENVY and VYNPC do not reach agreement as to such energy and capacity, and the PPA is otherwise neither modified nor extended, ENVY shall thereafter be free to sell the same without giving VYNPC any further notice and right to negotiate. Except for the obligation to provide notice and engage in good faith negotiations concerning the terms and conditions (including price) for any proposed sale, nothing in this section shall limit ENVY's right to sell energy and capacity produced by VYNPS to VYNPC, any of its sponsors or any third party.

(b) Before selling any energy or capacity produced as a result of an Uprate completed during the term of the PPA, ENVY shall give VYNPC reasonable notice of the availability of the energy and capacity as a result of the Uprate and will provide VYNPC a commercially reasonable opportunity for a period of 30 days to negotiate on an exclusive basis its purchase thereof. In the event ENVY and VYNPC do not reach agreement as to such energy and capacity, ENVY shall thereafter be free to sell the energy and/or capacity resulting from such Uprate without giving VYNPC any further notice and right to negotiate. Except for the obligation to provide notice and engage in good faith