

Vermont Yankee misrepresented the presence of these pipes and the threat the pipes pose to Vermont's groundwater at the outset of this Docket in and of itself justifies VNRC's intervention in this proceeding at this time. As previously noted, the fact that the pipes exist, and that they may be the source of the contamination, only came to light recently. VNRC argues that the misrepresentations made by Yankee officials relative to the existence of the pipes is a significant breach of trust and that the PSB, particularly in this case, should grant this motion based on the principle that the PSB should avail itself of the most accurate information possible.

II. The Legal Standard for Intervention

PSB Rule 2.209 (A) and (B) address intervention in Board Dockets. PSB Rule 2.209 (A) sets forth the criteria for intervention as of right. The provision of this rule that applies to VNRC is 2.209 (A)(3), which states a person may intervene "when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately protected by other parties."

PSB Rule 2.209 (B) sets forth the criteria for permissive intervention. Under this rule the PSB has the discretion to allow an applicant to intervene if the PSB determines that the applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." The rule then provides that in exercising its discretion, the PSB shall consider whether the applicant's interest "will be adequately protected by other parties," "whether alternative means exist by which the applicant's interest can be protected," and "whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public."

VNRC is petitioning to intervene under both PSB Rule 2.209 (A) and (B).

III. VNRC should be granted Intervention as of Right under PSB Rule 2.209 (A)

VNRC and its members have a substantial interest in this Docket and therefore should be allowed to intervene in the Docket under PSB Rule 2.209 (A). VNRC, founded in 1963, is a non-profit, tax-exempt environmental conservation organization with over 5,000 members. As Vermont's leading statewide conservation organization, VNRC advocates the sustainable use and protection of Vermont's natural resources. VNRC's by-laws provide that:

The mission of the Vermont Natural Resources Council shall be:

1. To promote the preservation, conservation and wise use of natural resources in the State of Vermont to the long-term benefit of the citizens and environment of the state.
2. To educate the general public in regard to the inter-relationship of our soils, waters, plants and animals, their effect on humans and humans' effect on them.

The by-laws further specify that to carry out its purposes, "VNRC shall, among other things . . . [a]dvocate before federal, state, regional or local government bodies, the view of VNRC with respect to its purposes." VNRC maintains a full-time policy staff with legal and technical expertise in land use, water, forestry, wildlife, and energy issues. Furthermore, the organization is a frequent participant in environmental permitting, policymaking, and legislative action. VNRC seeks to intervene in this matter in order to present the position of the organization and protect the substantial interests of the organization and its members with regard to the impact of this groundwater contamination on the relicensing of Vermont Yankee.

As previously stated, VNRC was a leader in advocating for the recent changes in Vermont's groundwater law that led to groundwater being declared a public trust resource by the Vermont Legislature. Accordingly, VNRC and its members have a substantial interest in ensuring that the

decision to relicense Vermont Yankee adequately protects Vermont's groundwater and, in particular, ensures that the decision of the PSB in this Docket is consistent with the requirements in Vermont law that groundwater be protected and managed as a public trust resource.

VNRC spent four years (2004-2008) working to protect Vermont's groundwater from overconsumption and depletion by embarking on a comprehensive, statewide effort to afford regulatory and public trust protections to the state's underground water resources. This effort culminated in the Vermont Legislature passing legislation to strengthen Vermont's groundwater protection laws. VNRC's initial efforts resulted in the establishment of a groundwater study committee that was charged with recommending changes to Vermont's groundwater protection laws, including whether groundwater should be declared a public trust resource. VNRC was the only environmental advocacy group represented on this committee. In 2008, following the issuance of the groundwater committee report in 2007, the Vermont Legislature adopted changes to Vermont's groundwater law, including amending the law to declare groundwater to be a public trust resource.

In light of the recent revelations that underground pipes from Vermont Yankee are polluting Vermont's groundwater, the PSB, in this Docket, will have to address the impact of relicensing Vermont Yankee on groundwater, whether groundwater contamination at the site violates the public trust protections for groundwater and the steps necessary for Vermont Yankee to remediate groundwater contamination. VNRC has a substantial interest in how the groundwater issues in this Docket are addressed by the PSB and, more importantly, a substantial interest in ensuring that Vermont's groundwater is protected in accordance with the law.

Addressing the other criterion in PSB Rule 2.209 (A), this Docket represents the exclusive means for VNRC to ensure that groundwater impacts are properly considered and addressed by the PSB in its decision on whether or not to relicense Vermont Yankee. In addition, VNRC's interest in this matter is not adequately protected by other parties. While the Vermont Agency of Natural Resources (ANR) may address groundwater impacts in this Docket, VNRC and ANR do not necessarily agree on what measures must be taken to address groundwater, and in particular what actions must be taken to ensure that Vermont Yankee does not violate the public trust in groundwater under Vermont law. VNRC and ANR have recently taken opposing positions on the application of the public trust doctrine to groundwater contamination in an appeal filed in the Vermont Environmental Court. If VNRC is not allowed to intervene in this proceeding, the PSB will not have the benefit of hearing an alternative view of the obligation of ANR to manage the groundwater that has been contaminated by Vermont Yankee consistent with the public trust doctrine. In addition, no other advocacy groups participating in the Docket have the same level of experience and expertise relative to the groundwater public trust requirements as VNRC.

IV. VNRC should be granted Permissive Intervention under PSB Rule 2.209 (B)

In addition to the above, VNRC should be granted permissive intervention under PSB Rule 2.209 (B). As noted above, the criteria for permissive intervention are a more relaxed version of the criteria for intervention as of right under PSB Rule 2.209 (A).

For example, unlike PSB Rule 2.209 (A) that requires that the PSB proceeding be the "exclusive" means for an applicant for intervention to protect its interest, Rule 2.209 (B) requires that no "alternative" means exist for such interest to be protected. As discussed above, the PSB is the sole regulatory authority that will determine if and under what conditions Vermont Yankee

will be relicensed. Accordingly, there are no alternative means for VNRC to address the impact of the contaminated groundwater on the PSB's decision on whether to relicense Vermont Yankee.

Finally, allowing VNRC to intervene will not unduly delay the proceeding or prejudice the interests of existing parties or of the public." PSB Rule 2.209 (B). The underground piping and the leak of tritium to groundwater has only recently been disclosed. If the PSB reopens the Docket, as requested by parties to this Docket, VNRC's participation will not cause any delay in the process or prejudice to any party. To the contrary, VNRC's formal participation will provide the PSB with important information and analysis about the groundwater impacts of Vermont Yankee as the PSB proceeds with its review under the Docket.

V. Conclusion.

For the aforementioned reasons the VNRC requests that it be allowed to intervene in this Docket.

Respectfully submitted,

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Dated February 9, 2010, Montpelier, Vermont