

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ENTERGY NUCLEAR VERMONT YANKEE, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 14-343C
)	(Judge Wheeler)
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

STIPULATION

Pursuant Appendix A, Paragraph VI.17 of the Rules of the United States Court of Federal Claims, Entergy Nuclear Vermont Yankee, LLC (“ENVY”) and the United States enter into the following stipulation. The parties may agree to additional stipulations prior to trial.

1. The claim period for the current proceeding, Case No. 14-343C, involves costs expended by ENVY between May 1, 2008 and December 31, 2013. The parties agree that, for purposes of this proceeding only, the fact that ENVY announced the permanent retirement of the Vermont Yankee Nuclear Power Plant (“Vermont Yankee”) on or about August 27, 2013, and that Vermont Yankee ceased producing power on or about December 29, 2014, does not affect ENVY’s currently-claimed damages.

2. Given the parties’ agreement, the parties further agree that potential acceleration of DOE’s acceptance of spent nuclear fuel from Vermont Yankee pursuant to the “Exchanges” clause of the Standard Contract is not relevant to this proceeding, and evidence regarding such exchanges will not be presented by either party in this proceeding. Through the end of this claim period (December 31, 2013), if DOE had performed at the rates identified in the 1987 Annual Capacity Report and *Pacific Gas & Electric Co. v. United States*, 536 F.3d 1282 (Fed. Cir.

2008), and if the DOE would have removed spent fuel from Vermont Yankee in accordance with its allocation rights under the “Oldest Fuel First” queue, ENVY would not have needed to add additional spent fuel storage capacity or maintain existing capacity beyond the pool at Vermont Yankee during the claim period.

3. Both parties expressly reserve all rights in any subsequent proceedings involving damages incurred after December 31, 2013, and their agreement and stipulation regarding this proceeding shall not be construed as any admission or waiver with respect to future proceedings. In particular and without limitation, the Government does not waive any arguments regarding the impact of awards based upon an oldest-fuel-first queue in this and the prior proceeding (*Entergy Nuclear Vermont Yankee, LLC et al. v. United States*, 95 Fed. Cl. 160 (2010)) upon any subsequent claim that ENVY might make to the effect that it would have utilized exchanges in the but-for world of DOE performance, and ENVY similarly does not make any waivers or concessions regarding any argument in subsequent proceedings that it would, in fact, have utilized exchanges in the but-for world of DOE performance.

AGREED TO:



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