



The Ethan Allen Letter

IDEAS FOR VERMONT'S FUTURE

A Monthly Publication of The Ethan Allen Institute

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Shumlin's Vermont Yankee Coercion Scheme

COMMENTARY

Entergy, the owner of the Vermont Yankee nuclear plant, and the state are now locked in judicial combat in federal court.

In 2002, when buying Vermont Yankee from its utility owners, Entergy agreed that it would seek a new Certificate of Public Good from the Public Service Board if it sought federal approval to continue to produce power after the plant's license expiration date (March 21, 2012). It also agreed not to attempt to bypass PSB jurisdiction by invoking federal preemption – the doctrine that a state cannot regulate federally licensed economic activity serving an interstate market in a way that contravenes federal regulatory authority.

Four years after this agreement, the Vermont General Assembly passed a bill (Act 160), opposed by Entergy, that required general assembly approval before the PSB could issue a final order on Entergy's application for a new certifi-

cate. This March Entergy received an extended 20-year license to continue producing power from Vermont Yankee, but Vermont's legislative leadership refused even a vote on approving Yankee's continued operation.

So Entergy went to federal court seeking a declaratory judgment that by approving Yankee's continued operation for 20 years, the federal government has preempted state regulation of nuclear plant operation. It also asks the court to find that the legislature's political interposition, ardently supported by Senator and now Governor Peter Shumlin, constitutes a deliberate scheme to extract money from Entergy for the benefit of Vermont utilities and ratepayers.

On the first point, Attorney General Sorrell, defending the state, holds up a 1983 Supreme Court case, *PG&E v. State*. In that case a California statute required legislative approval of a proposed but un-built nuclear plant, based on the applicant's satisfying a state commission that spent fuel rods would be acceptably handled. The court upheld the statute.

But in doing so, the court held that "the statute does not seek to regulate the construction or operation of a nuclear power plant." Clearly the Vermont statute seeks to completely deny the operation of an existing nuclear power plant that has given Vermont businesses, farms, and homeowners low cost baseload electricity for 39 years.

Furthermore, since the plant is a merchant generator, no longer owned by Vermont utilities, the traditional concerns of state regulators no longer apply.

Of particular interest is Entergy's charge of political coercion. From the brief:

"Vermont officials have further stated that they might condition any favorable exercise of the state's supposed licensing authority upon the wholesale sale of power generated by the Vermont Yankee Station to Vermont retail utilities at preferential rates compared to the rates charged by non-Vermont retail utilities.

"This condition coerces Plaintiff [Entergy] to enter into below market power purchase agreements with

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The Ethan Allen Letter

The Ethan Allen Institute is an independent, non-profit, nonpartisan public policy research and educational organization, incorporated in 1993 under Vermont law.

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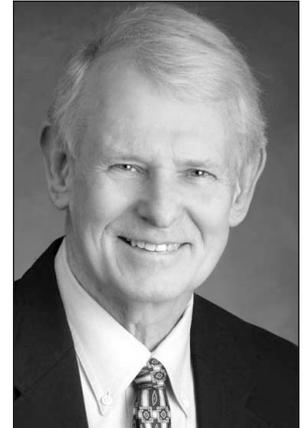
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EDITOR'S MESSAGE

The Coming Liberal Apocalypse



It came as no surprise that the Shumlin Administration and its compliant legislative majorities would seek more tax dollars to feed their Big Government habit. They raised the residential property tax, the non-residential property tax, the Mediscam health provider tax, the health claims tax, and the cigarette tax. This, from a Governor who said, repeatedly "Vermont has no more tax capacity."

Nor was it any surprise when the Governor propelled us into a full bore campaign to install \$3 billion worth of single-payer health care, which all the Democratic candidates endorsed in last year's primary campaign. (For how that's working out in Quebec, see the item on page 7.)

Nor was it any surprise when the Governor, speaking through climate expert Deb Markowitz, announced formation of a "climate cabinet" to help him make Vermont the global leader in the struggle against the Menace of Global Warming, or whatever it's being called this month (see p. 3).

Coming soon: a new state energy plan that will explain how Vermonters, with the despised (by Shumlin) nuclear plant shut down (see p. 1), will somehow meet their electricity needs – and feed a fleet of electric cars – with (subsidized) wind, solar, biomass, cow power, and insulation.

All this, for a little state with a looming \$2 billion unfunded liability for teacher and state employee retirement and health benefits! Wow!

The likely result of this agenda, about five years from now, is perfectly predictable. That is, unless you get off your duff and do something to stop it. See page 4 for details.



EDITOR

P.S.: This is our first on-line *Ethan Allen Letter*. Feel free to circulate it to your friends, your legislators, and others who need to be educated.

The New Climate Change High Command

COMMENTARY

Three years ago Senate President Peter Shumlin was the lead sponsor of a bill, ardently promoted by the Vermont Public Interest Research Group, to “make global warming the top priority of everything we do, not only in government, but in our own personal and private lives.” Shumlin’s conviction to this peculiar notion was so intense that he later declared that “any other conclusion is simply irresponsible.” (So much for reasoned debate.)

Now, as Governor, having set Vermont state government off on the road to raising \$3 billion in new taxes to pay for single-payer health care, Peter Shumlin is again turning to the his top priority of 2008. (The advocates now describe the issue as “climate change”, because Mother Nature dropped the ball on “global warming”.)

On May 17 the Governor announced establishment of the Vermont Climate Cabinet, composed of nine state officials appointed by Gov. Shumlin. The new body, chaired by ANR Secretary Deb Markowitz, will seek to ensure that “Vermont continues to be a national leader [in addressing] the challenge of climate change.”

The new Cabinet’s primary duty is to “leverage interconnectedness” by coordinating climate change efforts across all state agencies and departments. It will also tend to a long list of informing, strategizing, partnering, promoting, propagandizing, fostering, advising, and of course, looking for federal funding for “climate change mitigation”.

To get some idea of what the nine Shumlin appointees are likely to recommend, it’s worth looking back to the original Shumlin bill of 2008, S.350. That bill actually passed (Act 209), but only after the House, to the intense disappointment of VPIRG and presumably its lead sponsor, had pulled almost all of its teeth.

S.350 proposed to create VPIRG’s heart’s desire, a climate super-government with duties equivalent to those of the new Shumlin Climate Cabinet, but with a broader composition. That “climate cooperative” of 2008 would have been charged with supervising a bewildering array of task forces and working groups to produce a host of reports advocating new regulations, controls, mandates, plans, rules, standards, taxes and subsidies.

The bill would also have mandated – and enforced compliance with – a statewide greenhouse gas emission inventory and a state cap and trade program. This latter scheme would require emitters of the dreaded greenhouse gases in excess of a state-determined cap to buy emission tickets from other emitters operating under the cap. The bill prescribed gas guzzler taxes on vans, SUVs, and pickups to finance subsidies for \$41,000 electric cars. These provisions were dropped from the bill that was enacted.

Other complementary proposals either adopted or considered in the past few years are the Clean Energy Development Fund (to be funded by a new tax on electric bills); a Renewable Portfolio Standard, to require utilities to buy electricity from favored producers; a feed-in tariff, to require utilities to pay as much as five times the market price for renewable electricity; and tax benefits for people who install renewable energy systems. Act 168, enacted in

2006, actually declared a state goal of reducing of greenhouse gas emissions to an unimaginable 50 percent below 1990 levels.

Also urged are new subsidies for commuter rail (after the state threw away \$28 million on Howard Dean’s now-defunct Champlain Flyer); the Shumlin “thermal efficiency utility” to subsidize businesses to save money on heating fuel; an ever-increasing electricity tax (now at \$40 million, on its way toward the \$81 million demanded by VPIRG) to expand Efficiency Vermont’s services to more needy people like Green Mountain Coffee Roasters; a carbon tax; stringent building codes to reduce carbon footprints; and Act 250 amendments to put a stop to developments beyond walking distance of work, store and post office.

Now let’s be clear: it makes good sense for families, businesses, and governments to take cost-effective measures to reduce wasteful energy consumption. It makes good sense for vehicle buyers to consider the tradeoffs among speed, weight, power, safety, and fuel consumption. It may make good sense to install a renewable energy system where sun, wind, wood and water are favorable. Free people make those decisions all the time.

What makes no sense at all is this infatuation with the increasingly untenable notion that human-caused greenhouse gas emissions produce any detectable effect on the Earth’s climate – or that any conceivable collection of Big Brother regulations, taxes, mandates, and subsidies could achieve anything besides turning Vermont into an even less free and more taxed enclave of bureaucracy, servility, and economic stagnation.

Shumlin's Vermont Yankee Coercion Scheme

Continued from Page 1

Vermont's retail utilities that will effectively result in [Vermont Yankee] and out of state consumers subsidizing the electric bills of Vermont's consumers."

The brief supports that charge with several Shumlin statements, such as this one in January 2009, when he was Senate President: "There's no way we're going to vote to relicense the plant unless Vermonters are getting a great deal."

The court may well reach a conclusion favorable to Entergy's pre-emption claim. If it does so, the court may not choose to consider Entergy's claim that Act 160's political coercion of electricity genera-

tors violates the Federal Power Act. But Vermonters need to take a hard, clear look at the game that certain politicians, notably Peter Shumlin, have been playing.

That game comes down to a political ultimatum to Entergy: "Unless you agree to sell power to Vermont utilities at a sufficiently below-market price, we'll block you from obtaining the certificate you need to stay in business in this state."

This practice of selling valuable government permission has the rotten smell of every political machine from Tammany Hall to Boss Tweed to modern day Chicago to any number of today's despotic Third World

regimes. As the brief argues, the statements of Peter Shumlin and the general assembly's politicization of the regulatory process have "irremediably tainted" the authority that Shumlin and Sorrell claim the state has to shut down Vermont Yankee.

Moreover, the growing perception that the politicians now leading Vermont are practicing extortion – for their political advantage, if not for personal under the table payments – can only become an "irremediable taint" on the integrity of our state, and an increasingly troublesome obstacle to Vermont's future economic prospects.

Vermont Activist Directory

Ethan Allen Institute: commentaries, reports, valuable archive. www.ethanallen.org

Common Sense Radio: talk show sponsored by EAI, hosted by Rob Roper. WDEV AM 550/FM 96.1 weekdays 11:05-noon.

True North Reports: daily news and investigative reporting by Rob Roper and Angela Chagnon. www.truenorthreports.com

Energy EAI: sponsored by EAI Energy Education Project, hosted by project director Meredith Angwin. www.energyeai.org

YesVY: Informative and authoritative blog hosted by Meredith Angwin, on Vermont Yankee and larger nuclear energy issues. www.yesvy.blogspot.com

Vermont Tiger: premier Vermont blog hosted by Geoff Norman, with Art Woolf, Tom Evslin, Dan Foty, John McClaughry, and others. www.vermonttiger.com

Vermonters for Economic Health: campaign to wake Vermonters up to budget realities. www.vermontersforeconomichealth.org (Tom Licata)

Vermonters for Health Care Freedom: campaign to stop single payer health care. www.vthealthcarefreedom.com (Darcie Johnston)

Tea Party Groups:

www.vermontteaparty.com

www.greenmountainpatriots.com (NW Vermont)(Pat Crocker)

rutlandteaparty@gmail.com (Rutland Co.) (Jon Wallace)

capitolteaparty@gmail.com (Washington Co.) (Jessica Bernier)

barrecityteaparty@gmail.com (Barre City) (Kristin Sohlstrom)

vtgirl2@charter.net (Upper Valley) (Peg Coutermarsh)

blgm38@aol.com (Bennington Co.) (Barbara Marchetti)

Vermont Campaign for Liberty: www.vermontcampaignforliberty.org (Steven J. Howard)



VERMONT TRANSPARENCY

The Transparency Jackpot Revisited

In our May issue we ran a screaming headline “Finally – We Hit the Jackpot!” – meaning, we finally posted the state’s vendor data files at www.vttransparency.org. Alas, that wasn’t quite the case.

Nine months ago, Secretary of Administration Neale Lunderville and Commissioner Jim Reardon of the Department of Finance and Management agreed that the state would give us the vendor data files – minus certain confidential information that involved privacy protection. This information related mostly to small payments to families for foster child care, etc. While not conceding that this information is in fact legally confidential, we readily agreed to having it deleted, at least for the time being.

The task of deleting the confidential data fell to several state departments that, frankly, weren’t very interested in doing the job, despite explicit instructions (in December!) from the Secretary of Administration.

By April 17, after continued prodding, F&M received the files. Our webmaster was all ready to drop them into our website – but we got a frantic message from F&M saying “stop – the files include the addresses of state employees receiving non-salary payments (tuition reimbursement, foster care, etc.) It’s against the law to reveal the addresses of those employees, and our computer system doesn’t have a way of scrubbing out those names and payments.”

So we pulled the files and sent them back. Meanwhile we ran that exultant headline, believing that by the time the May newsletter reached its readers, everything would have been posted.

At this writing, June 26, we expect the cleaned files to be up on the site by mid-July.

This has been a long (two years) and arduous process, but we are grateful especially to Deputy F&M Commissioner Susan Zeller and data manager Karen Jaquith, who stayed with the project and did the heavy lifting. Check the site in mid-July!

– JMc

www.vttransparency.org

The Left Mobilizes for Government Health Care

On May 25 dozens of left-wing activists took part in a conference call to discuss how to get Vermonters to accept \$3 billion in new taxes to finance Gov. Shumlin’s Green Mountain Health Care – and the Governor himself took part, urging the participants to go all out.

Rob Roper and Angela Chagnon of True North Reports listened in on the call. You can read their

startling report of it at <http://truenorthreports.com/left-wing-groups-coordinate-with-governor-to-promote-single-payer>.

Be sure to sign up for TNR’s daily reports about Vermont issues, written from a free market perspective. Another good resource is www.vermontdigger.com, Anne Galloway’s investigative reporting and commentary site.

Top 10 Worst Tax States for Retirees: “You’ll need the ‘early-bird special’ in these expensive places.” No. 1 – VERMONT. (www.Kiplinger.com, 6/23/11)

America’s Fiscal Crisis: Tom Licata of Vermonters for Economic Health has penned a potent commentary on where our spendaholic society is heading. Read it at www.vermont-tiger.com.

Financing Health Care: “Under your projections [of Green Mountain Care costs], it is clear a payroll tax will be insufficient. I am going to ask the top 2,447 households in Vermont to help pay for it by agreeing to raise their income tax to the point where it will leave them only an average post-tax income of \$1.3 million. This would have provided in 2007 \$1.8 billion for Green Mountain Care. Such an amount will greatly reduce the load on the proposed payroll tax.” – Noted Springfield letter writer Chuck Gregory, to Wendy Wilton (6/16/11)

Shumlin’s “Single Payer” Myth: “No matter what Vermont does, Medicare is probably not going to be a party to Green Mountain Care (Medicare represents just under 100,000 Vermonters). ERISA policies can’t be touched according to federal law (that’s just over 100,000 Vermonters). Veterans will remain on federal insurance programs. And, the system will still have to accommodate all of the private insurance policies of non-Vermont residents who use our hospitals, as well as the private ‘wrap-around’ policies necessary for supplementing the ‘essential’ (but not comprehensive) state-provided coverage. There are going to be many different payers in this system.” – Rob Roper (TNR 6/20/11)

The Menace of CO2: “Atmospheric CO2 levels should be above 150 ppm to avoid harming green plants and below about 5,000 ppm to avoid harming people. The current rate of burning fossil fuels adds about 2 ppm per year to the atmosphere, so

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that getting from the current level [380ppm] to 1,000 ppm would take about 300 years—and 1,000 ppm is still less than what most plants would prefer, and much less than either the NASA or the Navy limit for human beings.” – Physics Prof. William Happer, Princeton (FT 6/11).

RomneyCare in Action: “Health insurance costs borne by Massachusetts’s small businesses have risen annually by 15 percent over the past five years, an unsustainable increase for the firms that historically create two-thirds of all new jobs in the state.” (Pioneer Institute, 6/23/11)

ObamaCare in Action: McKinsey & Co. conducted a survey of over 1,300 employers across the country, and found that “30 percent of employers will definitely or probably stop offering [employer-sponsored insurance] in the years after 2014.” Among those with a “high awareness of reform,” more than 50 percent will do so.

The progressive Urban Institute recently published a study fearing that “droves of employees—potentially tens of millions – are likely to shift out of employer-provided health insurance over the next decade or two, especially as newer firms and their employees find it more profitable [to do so].” (*Forbes*, 6/7/11)

You Suffer, WE Decide: “Dr. Deb Richter did, however, hint at how costs would be contained under this [Green Mountain Care] system. Asked about the high cost of treatment at end of life, Richter responded, ‘We need to look at the health and the needs of the whole population and invest in only what is necessary. And, right now what we have is too much technology needed by the population ... We as a society have to decide how much we want to spend on health care, how much we want available.’”

Of course “we” going forward is the people on this [single payer conference] call. The rest of us in the “population” need to decide

if we want VPIRG, Vermont Businesses for Social Responsibility, etc. deciding how much health care is available to us, and what’s just “too much technology.” – Rob Roper (*True North Reports*, 6/22/11)

Mercatus Freedom Rankings: The Mercatus Center at George Mason U. issued its 2011 economic and personal freedom rankings of the states. New Hampshire scored No. 1 in combined economic and personal freedom; Vermont scored No. 30 combined, No. 44 in economic freedom and No. 2 in personal freedom.

Mercatus based its personal freedom rankings largely on liberal firearms laws, civil unions, home schooling regs and lax marijuana enforcement. Vermont’s low score on economic freedom was not unexpected, but apparently Mercatus paid little attention to the state’s regulatory scope and apparatus. Despite the authors’ statement that they consulted with state free-market think tanks, we don’t recall having had any such conversation.

Welch on Ethanol: “It’s time to acknowledge that it’s been a failure and in fact worse than a failure. It’s doing a lot of damage. So it’s time really to ask the question, should we get rid of these government subsidies, protective tariffs and mandates and let the market do its work?” (Tiger 6/10/11)

It was time to ask that a long time ago, but this realization is certainly progress.

Keller on ACOs: “The only way a Single Payer can achieve the savings that an Accountable Care Organization can achieve, would be to do exactly what the ACO does: put all of the providers (and thus consumers) of health care on a budget. That’s the harsh reality; that’s the only way to

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The Ethan Allen Institute

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'bend the curve.' I'm ready for this; I've been ready for years. But is anyone else? – Jeanne Keller (TEBH 6/15/11)

Education Spending Milestone: In the school year 2008-09 Vermonters spent \$15,175 per pupil on public elementary and secondary education – exclusive of capital expenditures and debt service. This is 45 percent higher than the national average. VT ranked fourth after NY, NJ, and AK. (Census Bureau)

Carbon Polluters Cause Lake Champlain Flooding? “Noting the recent flooding from Lake Champlain, which reached record levels last week after an unusually wet winter and spring, [Prog city councilor Emma] Mulvaney-Stanak added, ‘The clock is ticking on climate change all around us, and we need to be pragmatic.’ (NYT 5/12/11)

News from Quebec: “Quebec’s health care system was implemented

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in the 1960s at the behest of a commission led by Dr. Claude Castonguay, the so-called “father of Quebec Medicare.”

Forty years later, in 2008, Castonguay ... concluded that Canadian health care was in crisis. “We thought we could resolve the system’s problems by rationing services or injecting massive amounts of new money into it,” he said.

His prescription for Canadian health care? “We are proposing to give a greater role to the private sector so that people can exercise freedom of choice.” (Sally Pipes, *Forbes*, 6/8/11)

Ignorant Students: “When the Department of Education last week released the results of the latest National Assessment of Educational Progress – “the Nation’s Report Card“ – the bottom line was depressingly predictable:

Not even a quarter of American students is proficient in U.S. history, and the percentage declines as students grow older. Only 20 percent of 6th graders, 17 percent of 8th graders, and 12 percent of high school seniors demonstrate a solid grasp on their nation’s history.” – Jeff Jacoby (*Boston Globe*, 6/20/11)

Union Teacher Dedication: “Along with 250 fellow teachers, I took the entire week off to lobby and demonstrate – during the middle of state testing for most California schools. Many of us went on union release time, with the California Teachers Association spending \$1 million to pay for substitute teachers.

“For teachers to leave their classrooms at this time of the semester wasn’t easy, and it showed how committed we were.” – Alice Mercer, Sacramento elementary school teacher. (EIA 6/1/11)

Committed to getting more money for less work, right?

Supreme Court Throws Out Sorrell Greenhouse Gas and Data Mining Theories

Seven years ago Attorney General William Sorrell signed Vermont on to a lawsuit hatched in Connecticut at the behest of global warming fighters. The suit, in Federal Court, claimed that the eight state parties suffered from carbon dioxide emissions from coal burning electric plants in the Midwest.

This, the plaintiffs said, constituted a nuisance under the shaky legal concept of “Federal common law”. They asked the Federal judiciary to order the utility Defendants to do costly things, and a victory would have set off a flood of global warming nuisance lawsuits.

On June 20 the Supreme Court ruled that Sorrell and company cannot sue the power companies under a Federal common law nuisance theory.

The fact that the 8-0 opinion was authored by the Court’s most liberal justice, Ruth Bader Ginsburg, adds force to the rejection of Sorrell’s legal theory. She pointed out the legal anarchy that would result if district judges were allowed to issue ad hoc case by case injunctions to prevent nuisances.

Here’s what EAI said about this suit when it was filed seven years ago: “Vermont’s attorney general is using the resources of his office to engage in a politically motivated legal scavenger hunt. And just as with his failed suit [actually, a petition] against Microsoft, Vermont will come out a loser again.”

On June 23 the Supreme Court upheld an appellate court ruling invalidating Vermont’s 2007 data mining law as a violation of the First Amendment. In a 6-3 ruling, the high court said the state may not restrain certain speech by certain disfavored speakers, and the fear that people would make bad decisions if given truthful information cannot justify content-based burdens on speech.

Sorrell headed the state’s legal team defending the law. We don’t know if Sorrell personally advised the legislature in crafting the constitutionally defective law, but it seems not at all unlikely. – JMc



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Vermont Tiger (www.vermonttiger.com)

June 22, 2011

Bag Efficiency Vermont

MEDIA

The Mt. Mansfield Company in Stowe got energy consulting from Efficiency Vermont which results in their making snow more efficiently and saving scads of energy and money. Saving energy and money is good; do we really believe Mt. Mansfield wouldn’t have done this on their own assuming it makes sense? Do we really need to move “efficiency” money through our electric bills to electric utilities, through EV with its overhead, and then back to those savvy enough to use “free” service from EV? In fact we are giving EV a monopoly on these services by subsidizing them to offer the services free or at reduced cost. This does NOT help build a competitive energy efficiency industry in Vermont....

Efficiency Vermont’s proposed budget for 2011 is \$40,787,200 “Prior to Performance Based Fee” of which \$32.7 million would come from the fee on our

electric bills – which would have to be raised. The Vermont Public Service Department is recommending that the increase be held to “only” 3 percent. The decision of how much to tax your electric bill is made not by the legislature but by the Public Service Board – the legislature delegated this. In fact this money doesn’t even show up in Vermont’s budget – it’s a stealth tax.

This procedure means that the merits of spending taxpayer (OK, ratepayer) money to finance EV programs, such as buying down the cost of compact fluorescent lights and running cute TV ads showing the curly bulbs bellied up to a Western bar, don’t get debated alongside the other tough decisions that have to be made about taxpayer money. Maybe EV’s programs would survive such a process; maybe they wouldn’t. But it’s very bad government to have spending off the books or to have a stealth tax which can increase without the benefit and public scrutiny of legislative process.

– TOM EVSLIN