

Precedent for action against Entergy

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Entergy prevailed in court by asserting that the legislature was concerned exclusively about safety, which is the exclusive purview of the NRC. So what is our next move? An article by investigative reporter and journalism professor Karl Grossman on Counterpunch. com explains how eminent domain was used to close the ill-conceived Shoreham reactor in 1985 - before it opened.

The application of the state's power of "eminent domain" to nuclear power was pioneered in New York State in the 1980s - and was how the completed Shoreham nuclear plant was stopped from opening. That ended the scheme of nuclear promoters to turn Long Island into a "nuclear park" with seven to 11 nuclear plants.

The Long Island Power Act was passed by New York State in 1985 creating a Long Island Power Authority with the power to seize the assets and stock of the utility behind this nuclear scheme, the Long Island Lighting Company.

The federal government was gung-ho for Shoreham. The Nuclear Regulatory Commission had approved the start-up of operations at Shoreham, the first of three nuclear plants to be built on that site, and the construction of two more nuclear plants at Jamesport, to be joined by two more there

But by enacting the Long Island Power Act that utilized the state's power of "eminent domain," New York State made clear that if LILCO (Long Island Lighting Company) persisted with nuclear power, the state would eliminate it.

This strategy can be used by the State of Vermont - and other states - faced by the nuclear juggernaut of the federal government and nuclear industry. Indeed, it's a strategy that needs to be pursued because it is highly unlikely that federal nuclear officials will be sensible or fair - or uphold democracy.

Here the author apologizes for the muddle of these details and begs some concentration of the reader. The eminent domain maneuver was not a complete success. Steven Liss was co-author of the Long Island Power Act (LIPA), and as a director of the Long Island Power Authority he negotiated the shutdown of the Shoreham plant with its owner, LILCO. He is now legal counsel to the New York State Legislative Committee on Ecology and the Environment. According to Mr. Liss, LILCO was about to take crushing billion-dollar losses when the governor intervened with a state buy-out. The intervention was upheld in court in 1991. Nobody expects Governor Shumlin will intervene so mercifully for Entergy. Even so, the appellate court decision acknowledged that "the Agreement plainly accomplished an urgent objective of the act (LIPA): the prevention of further rate increases attributable to the Shoreham enterprise."

It bears emphasis here that eminent domain does not relieve the owner of the liabilities of the property. When property is taken by eminent domain the evaluation sensibly includes its assets

AND the liabilities. The cleanup of VY is definitely a liability, and would be counted AGAINST the owner. The Shoreham plant had not even started to operate, and the public was not threatened by the enormous contamination that VY has. If VY is slated for closure, it's worth approximately \$0. Subtract the cleanup costs, and Entergy could theoretically owe money to the state.

Besides the threat to human health and safety VY poses an over-looked threat to the economy. The cleanup funds for similar plants in New England were underestimated by five hundred million to one billion dollars each, and these sites weren't contaminated like VY. Such a billion dollar shortfall could bankrupt our state. Bob Stannard, an antinuclear lobbyist in Montpelier, says "It is very clear that Vermont taxpayers will be on the hook if no citizen action is taken."

The action came in 2010 when five citizens in Brattleboro promoted the EMDOVY resolution, for a legislative study of Eminent Domain Over VY. The resolution urges action on economic grounds: 'the welfare of the people of Vermont'. Under the Constitution eminent domain is provided for projects "of public use", such as reservoirs, roads, and so forth. Recently, however, courts have interpreted "public use" to include benefits to the economy, as in *Kelo vs New London*. That infamous Supreme Court decision allowed a private company to demolish the homes of seventy New London residents for a condominium-office development because it would benefit the local economy. Under such precedents eminent domain can protect the economy of Vermont from the threat of VY's immense cleanup costs. Energy wants to abandon the cleanup, whether by "spinning off" the plant to a bogus subsidiary, establishing "safe-storage" for sixty years, or by selling the site to another industrial user. Eminent domain can force Entergy to pay before their next trick. Since the people of Brattleboro approved the resolution, the possible refueling, the court decision, and the possible appeal have all been rationale and cause for delay. To this author's knowledge, of all our legislators, only Sarah Edwards has taken any action on her constituents' vote. An eminent domain proposal is now under review of legislative council.

EMDOVY is a tactical measure to confront Entergy's deceptive propaganda. Governor Shumlin appreciates this need and has said he wants to "hold Entergy's feet to the fire" about the cleanup. Eminent domain provides a mechanism for an official assessment of the cleanup to contradict the bogus assessment prepared by Entergy. Eminent domain is tactical because a legislative assessment would not require a vote of the assembly or the senate. It needs only to be available as an official document to be effective. This is the "fire" the Governor Shumlin needs. It is also tactical because extreme levels of civil disobedience are being discussed in public. Entergy's interests will be protected by private security forces. With eminent domain in progress Governor Shumlin could assign state police to the site to protect the protesters and keep the peace under his direction.

People are rightly fired-up about Judge Murtha's decision, which provokes us on so many levels: as Vermonters with state's rights, as people with common sense, as human beings endowed with compassion. It is just sickening that the court rebukes our legislators for an overriding concern for human safety, but such is the world of nuclear regulations. Instead of secondguessing the decision, though, we can learn something: we have been playing on THEIR turf for too long. If safety is NRC turf, we can do more. The VY economic threat can be demonstrated with the legislative assessment required by eminent domain. The legislature can then direct the Public Service Board to deny Entergy the certificate on economic grounds. And if it goes to court again, Entergy's safety argument will be irrelevant. Our wits should inform our energy. And we absolutely must show Entergy that we will not just sit and wait for their next trick ! LIPA is a

precedent for eminent domain over a nuclear plant.. Thanks to Mr. Liss and his team there is now not one power plant on Long Island. Let's make it so in Vermont.

Kurt Daims is the spokesman for EMDOVY. He writes from Brattleboro.