June 2, 2014

Mr. John F. McCann
Vice President, Fleet Regulatory Assurance
Entergy Nuclear Operations, Inc.
440 Hamilton Ave.
White Plains, NY 10601

SUBJECT: REQUEST FOR VOLUNTARY RESPONSE TO 2.206 PETITION REGARDING FINANCIAL QUALIFICATIONS OF JAMES A. FITZPATRICK NUCLEAR POWER PLANT, PILGRIM NUCLEAR POWER STATION, AND VERMONT YANKEE NUCLEAR POWER STATION (TAC NOS. MF1092, MF1093, AND MF1094)

Dear Mr. McCann:

By letter dated March 18, 2013, as supplemented by letters dated April 23, June 28, July 22, October 16, November 13, and November 27, 2013, the Alliance for a Green Economy, Citizens Awareness Network, Pilgrim Watch, and Vermont Citizens Action Network (the petitioners) submitted a petition, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 2.206. The petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take enforcement action against Entergy Nuclear Operations, Inc. (Entergy) to: (1) suspend operations at James A. Fitzpatrick Nuclear Power Plant (Fitzpatrick) and Vermont Yankee Nuclear Power Station (Vermont Yankee); (2) investigate whether Entergy possesses sufficient funds to cease operations and to decommission the Fitzpatrick and Vermont Yankee reactors, per 10 CFR 50.75; and (3) investigate Entergy’s current financial qualifications, per 10 CFR 50.33(f)(5), for Pilgrim Nuclear Power Station to determine whether Entergy remains qualified to continue safe operation of the facility.

The NRC staff is reviewing the petition and has determined that additional information is needed to complete its review. In accordance with the 10 CFR 2.206 petition review process, the NRC staff is requesting that Entergy voluntarily provide a response to the enclosed questions within 60 days of May 28, 2014.
If you have any questions regarding this matter, please contact the Petition Manager, Nadiyah Morgan, at (301) 415-1016.

Sincerely,

Michele G. Evans, Petition Review Board Chair -
Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-333, 50-293, and 50-271

Enclosure:
Request for Voluntary Response to 2.206 Petition

cc w/encl:
Vice President, Operations
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James A. Fitzpatrick Nuclear Power Plant
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Pilgrim Nuclear Power Station
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Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
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Governor Hunt Road
Vernon, VT 05354

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REQUEST FOR VOLUNTARY RESPONSE TO 2.206 PETITION REGARDING FINANCIAL QUALIFICATIONS

ENTERGY NUCLEAR OPERATIONS, INC.
JAMES A. FITZPATRICK NUCLEAR POWER PLANT
PILGRIM NUCLEAR POWER STATION
VERMONT YANKEE NUCLEAR POWER STATION
DOCKET NOS. 50-333, 50-293, AND 50-271

Background

The Alliance for a Green Economy, Citizens Awareness Network, Pilgrim Watch, and Vermont Citizens Action Network (the petitioners) submitted a petition under Title 10 of the Code of Federal Regulations (10 CFR) Section 2.206 requesting the U.S. Nuclear Regulatory Commission (NRC) to take an enforcement action against James A. Fitzpatrick Nuclear Power Plant (Fitzpatrick), Pilgrim Nuclear Power Station (Pilgrim), and Vermont Yankee Nuclear Power Station (Vermont Yankee). The petition dated March 18, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13079A022) was supplemented by letters dated April 23, June 28, July 22, 2013, October 16, November 13, and November 27, 2013 (ADAMS Accession Nos. ML13133A161, ML13184A109, ML13205A251, ML13294A400, ML13335A002, and ML14016A361, respectively).

The petitioners requested that the NRC take enforcement action to: (1) suspend operations at Fitzpatrick and Vermont Yankee; (2) investigate whether Entergy Nuclear Operations, Inc. (Entergy, ENO, the licensee) possesses sufficient funds to cease operations and to decommission the Fitzpatrick and Vermont Yankee reactors, per 10 CFR 50.75; and (3) investigate Entergy’s current financial qualifications, per 10 CFR 50.33(f)(5), for Pilgrim to determine whether the licensee remains qualified to continue safe operation of the facility.

The petitioners asserted that Entergy’s financial position has been impaired and that it may no longer have the ability to safely operate and maintain the Fitzpatrick and Vermont Yankee plants. Petitioners requested examination of Entergy’s financial qualifications, and also, requested that the NRC examine the financial position of Pilgrim.

Pursuant to 10 CFR 2.206 of the Commission’s regulations, the NRC Petition Review Board accepted the 2.206 petition for review on August 7, 2013 and determined that the immediate suspension of operations at Fitzpatrick and Vermont Yankee was not warranted.

Enclosure
NRC Monitoring of Licensee Financial Qualifications

A safety evaluation dated July 28, 2008 (ADAMS Accession No. ML081080352), which evaluated the cost and revenue projections and other financial information was submitted with Entergy's license transfer application dated July 30, 2007 (ADAMS Accession No. ML072220219). The NRC staff concluded in its safety evaluation that there was reasonable assurance that Fitzpatrick and Pilgrim could obtain the necessary funds to cover estimated operation costs for the period of the license and thus, met the requirements of 10 CFR 50.33.

On November 7, 2013, Entergy filed a 10Q statement with the Securities and Exchange Commission (SEC), stating:

The economic downturn and negative trends in the energy commodity markets have resulted over the past few years in lower natural gas prices and lower market prices for electricity in the New York and New England power regions, which is where five of the six Entergy Wholesale Commodities nuclear power plants are located. Entergy Wholesale Commodities's nuclear business experienced a decrease in realized price per megawatt hour to $50.29 in 2012 from $54.73 in 2011 and $59.16 in 2010. These price trends present a challenging economic situation for the Entergy Wholesale Commodities plants. The challenge is greater for some of these plants based on a variety of factors such as their market for both energy and capacity, their size, their contracted positions, and the investment required to maintain the safety and integrity of the plants. If, in the future, economic conditions or regulatory activity no longer support the continued operation of a plant by Entergy it could adversely affect Entergy’s results of operations through impairment charges, increased depreciation rates, transitional costs, or accelerated decommissioning costs.

The November 7, 2013 SEC filing indicates a change in the Fitzpatrick and Pilgrim revenues on which the NRC staff based its 2008-safety evaluation.

Request for Voluntary Information

The following information is requested:


   a. Where costs exceed revenues, indicate additional source(s) of funding to cover operating and maintenance (O&M) costs, for example, parent or affiliate company guarantees, lines of credit for contingency operating funds, or cash pooling arrangements.

   b. Indicate whether revenue shortfalls contributed to the recent white performance indicators at Fitzpatrick and Pilgrim.
2. The Fitzpatrick operating license contains License Condition 2.G:

ENF [Entergy Nuclear FitzPatrick] and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies, to void, cancel, or modify the $70 million contingency commitment to provide funding for the facility as represented in the application for approval of the transfer of the facility license from PASNY to ENF and ENO, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

a. Is the contingency commitment still in effect?

b. Identify the entity that currently guarantees this commitment.

3. The Pilgrim operating license contains License Condition J.4:

Entergy Nuclear shall have access to a contingency fund of not less than fifty million dollars ($50m) for payment, if needed, of Pilgrim operating and maintenance expenses, the cost to transition to decommissioning status in the event of a decision to permanently shut down the unit, and decommissioning costs. Entergy Nuclear will take all necessary steps to ensure that access to these funds will remain available until the full amount has been exhausted for the purposes described above. Entergy Nuclear shall inform the Director, Office of Nuclear Regulation, in writing, at such time that it utilizes any of these contingency funds.

a. Is the contingency commitment still in effect?

b. Identify the entity that currently guarantees this commitment.


Entergy stated in its 8K statement to the SEC dated August 27, 2013:

Vermont Yankee is expected to cease power production after its current fuel cycle and move to safe shutdown in fourth quarter 2014. This decision was approved by Entergy Corporation's Board of Directors on August 25, 2013. The decision to shut down the plant was driven by sustained low natural gas and wholesale energy prices, the high cost structure of the plant, and wholesale electricity market design flaws in the region in which the plant operates.

As a result of the decision to shut down the plant, Entergy will recognize a non-cash impairment charge of $287 million ($181 million after-tax) in third quarter 2013. Entergy performed a fair value analysis based on the income approach, a discounted cash flow method, to determine the amount of impairment. The estimated fair value of the plant and related assets at July 31, 2013 was $62
million, while the carrying value was $349 million. The carrying value of $349 million reflects the effect of a $58 million increase in Vermont Yankee's estimated decommissioning cost liability and the related asset retirement cost asset. The increase in the estimated decommissioning cost liability resulted from the change in expectation regarding the timing of decommissioning cash flows due to the decision to cease operations.

In addition to the impairment charge, through the end of 2014 Entergy expects to record additional charges totaling approximately $55 million to $60 million related to severance and employee retention costs.

a. Given that Vermont Yankee is expected to cease power production in fourth quarter 2014, indicate if this changes any of the information provided in Entergy's response to the NRC staff RAI dated May 6, 2013.

b. In its July 30, 2007 (ADAMS Accession No. ML072220219), license transfer application, Entergy described three financial support arrangements for Entergy Nuclear Vermont Yankee, LLC as follows:

- $35 million provided by Entergy International Holdings, LLC for financial assurance for safe plant operation and for decommissioning.
- $35 million to be provided by Entergy Corporation “if the financial assurance line is below $35M at the point that it is determined that Vermont Yankee will cease operations.”
- $25 million to be provided by Entergy Corporation “if the financial assurance line is below $25M at the point that it is determined that Vermont Yankee will cease operations.”

i. Provide copies of current financial arrangements.

ii. Indicate the amount of funds extended by the guarantor(s) pursuant to the agreements to date.

Entergy

5. In its July 30, 2007 (ADAMS Accession No. ML072220219), license transfer application, Entergy stated:

ENO will receive the revenue necessary to operate and maintain the Facilities, including decommissioning funds to pay for such expenses, from the corporate entities licensed to own the Facilities pursuant to operating agreements or other intra-corporate arrangements that have been previously described to NRC.

Provide the current operating agreements and/or intra-corporate arrangements among and between Fitzpatrick, Pilgrim, Vermont Yankee and Entergy related to financing the O&M costs for NRC licensed activities.
If you have any questions regarding this matter, please contact the Petition Manager, Nadiyah Morgan, at (301) 415-1016.

Sincerely,

/RAl/

Michele G. Evans, Petition Review Board Chair -
Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-333, 50-293, and 50-271

Enclosure:
Request for Voluntary Response to 2.206 Petition

cc w/encl:
Vice President, Operations
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Site Vice President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
P.O. Box 250
Governor Hunt Road
Vernon, VT 05354

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ADAMS Accession No.: ML13357A024

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*Via email

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