

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 OFFICE OF NUCLEAR REACTOR REGULATION

William M. Dean, Director

In the Matter of	)	
	)	
Entergy Nuclear Operations, Inc.	)	
	)	
James A. FitzPatrick Nuclear Power Plant	)	Docket No. 50-333
Entergy Nuclear FitzPatrick, LLC	)	
	)	License No. DPR-59
	)	
Pilgrim Nuclear Power Station	)	Docket No. 50-293
Entergy Nuclear Generation Company	)	
	)	License No. DPR-35
	)	
Vermont Yankee Nuclear Power Station	)	Docket No. 50-271
Entergy Nuclear Vermont Yankee, LLC	)	
	)	License No. DPR-28

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

By electronic transmission dated March 18, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13079A022), Mr. Timothy Judson, President of Citizens Awareness Network, filed a petition under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206, "Requests for Action under This Subpart," on behalf of the Alliance for a Green Economy, Citizens Awareness Network, Pilgrim Watch, and Vermont Citizens Action Network (hereafter, referred to as "the petitioners"). The petition was supplemented on April 23, May 7, June 28, July 22, October 16, November 13, November 27, and December 2, 2013; October 20, 2014; and January 27, 2015 (ADAMS Accession

Nos. ML13133A161, ML13135A001, ML13184A109, ML13205A251, ML13294A400, ML13335A002, ML14016A361, ML15027A458, ML15027A462, and ML15039A011, respectively).

The petition and supplements are available at the U.S. Nuclear Regulatory Commission (NRC or the Commission) Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons without access to ADAMS or who have problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

The petitioners requested that the NRC take enforcement action to: (1) suspend operations at James A. FitzPatrick Nuclear Power Plant (FitzPatrick) and Vermont Yankee Nuclear Power Station (Vermont Yankee); (2) investigate whether Entergy Nuclear Operations, Inc. (ENO, the licensee<sup>1</sup>), possesses sufficient funds to cease operations and decommission FitzPatrick and Vermont Yankee per Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50.75, "Reporting and Recordkeeping for Decommissioning Planning;" and (3) investigate ENO's current financial qualifications per 10 CFR 50.33(f)(5) to determine whether the licensee remains qualified to continue operating Pilgrim Nuclear Power Station (Pilgrim). The petitioners assert that ENO no longer meets the financial qualifications requirements to possess the licenses and operate FitzPatrick, Pilgrim, and Vermont Yankee in accordance with 10 CFR 50.33(f)(2) and 10 CFR 50.80(b)(1)(i).

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<sup>1</sup> The licensee is the licensed operator of FitzPatrick, Pilgrim, and Vermont Yankee. FitzPatrick is owned by Entergy Nuclear FitzPatrick, LLC (ENF). Pilgrim is owned by Entergy Nuclear Generation Company (ENGC or Entergy Nuclear). Vermont Yankee is owned by Entergy Nuclear Vermont Yankee, LLC (ENVY). Entergy Nuclear, ENF, and ENVY are licensee/owners. Entergy Corporation is the parent company of all the licensees.

The petitioners met with the Office of Nuclear Reactor Regulation Petition Review Board (PRB) on May 7, 2013, to clarify the basis for the petition. The transcript of this meeting (ADAMS Accession No. ML13135A001) was treated as a supplement to the petition.

In its August 7, 2013 (ADAMS Accession No. ML13154A313), acknowledgement letter, the NRC staff informed the petitioners that their request for immediate actions to suspend operations at FitzPatrick and Vermont Yankee was denied.

The NRC employs multiple engineered barriers and several levels of reactor oversight in NRC regulations that provides reasonable assurance of adequate protection of public health and safety and the environment. Emergent safety concerns are promptly identified and assessed through the NRC's Reactor Oversight Process (ROP). The ROP requires that licensees take prompt corrective action to resolve identified safety concerns. In addition, permanent onsite resident inspectors monitor the day-to-day operations at the plants, which provides an additional assurance of safe operation.

The NRC staff also informed the petitioners of the PRB's final recommendation to accept the petition for review because it met the criteria in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," Section III.C, "Criteria for Reviewing Petitions Under 10 CFR 2.206."

By letter dated June 2, 2014 (ADAMS Accession No. ML13357A024), the NRC staff issued a request for voluntary information to ENO in accordance with Management Directive 8.11. Specifically, the NRC staff requested additional information related to ENO's 10-Q quarterly report dated November 7, 2013, which was filed with the U.S. Securities and Exchange Commission (SEC) on FitzPatrick and Pilgrim revenues. By letter dated July 24, 2014 (ADAMS Accession No. ML14212A050), ENO provided a response and the PRB considered the information in its evaluation of the petition.

## II. DISCUSSION

### Regulatory Background

Section 182.a of the Atomic Energy Act of 1954, as amended (AEA), provides that: “Each application for a license... shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant... as the Commission may deem appropriate for the license.” The NRC's regulations at 10 CFR 50.33(f) govern financial qualification reviews of license applications for the construction or operation of nuclear power plants. The NRC staff reviews the financial qualification for each applicant for construction permits, operating licenses,<sup>2</sup> and license transfers. An applicant must demonstrate to the Commission that its financial qualifications are sufficient to carry out the activities for which the permit or license is sought.

The regulations at 10 CFR 50.33(f)(2) require the *operating license applicant* to submit information that demonstrates that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. The applicant must submit estimates for total annual operating costs for each of the first 5 years of operation of their facilities and provide the source(s) of funds to cover operating costs. The NRC staff follows the process described in Revision 1 of NUREG-1577, “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommission Funding Assurance,” to perform its financial qualification review.

The NRC does not regulate or provide oversight of commerce, and does not review commercial activities and decisions of its licensees unless such actions may impact safety. However, the NRC staff does employ a process of monitoring licensees by screening trade

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<sup>2</sup> An electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 50.22, “Class 103 Licenses; for Commercial and Industrial Facilities,” is exempt from a financial qualifications review.

papers, industry newsletters, and various public sources for business, finance, and economic news throughout the terms of their licenses for any indications that they may not have sufficient financial resources to operate their plants safely. The regulations at 10 CFR 50.33(f)(5) give the NRC the authority to:

... request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds... This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

Information gathered is used to provide NRC regional management with situational awareness in performing inspections and evaluating inspection findings, and to inform discussions between NRC management and licensees. Ultimately, the NRC's primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs.

The NRC reviews license transfer applications, governed by 10 CFR 50.80, "Transfer of Licenses." This process consists of assuring that the new licensed entity has the capability to meet the financial qualification requirements, applicable to decommissioning funding assurance, and any other technical qualification aspects of NRC regulations.

The NRC also reviews methods of providing decommissioning funding required of license applicants and licensees. Decommissioning a facility or site safely removes it from service and reduces residual radioactivity to a level that permits (1) the release of the property for unrestricted use and termination of the license, or (2) the release of the property under restricted conditions and termination of the license. The costs of spent fuel management, site restoration, and other costs not related to decommissioning are not included in the financial assurance for decommissioning for nuclear reactors.

Decommissioning funding assurance for nuclear power plants is governed by 10 CFR 50.33(k), 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," and 10 CFR 50.82, "Termination of License," in a three-stage process. First, 10 CFR 50.33(k) requires licensees to submit, with each application for a production or utilization facility, a report as described in 10 CFR 50.75, including a certification specifying how financial assurance for decommissioning will be provided. Second, 10 CFR 50.75(c)(2) requires licensees to adjust annually the amount of decommissioning funding assurance using an amount equal to or greater than the formula amount in 10 CFR 50.75(c). The regulations at 10 CFR 50.75(f)(1) requires the status of decommissioning funds to be reported to the NRC at least once every 2 years. Third, 10 CFR 50.75(f) also requires that 2 years before permanent cessation of operations, a licensee must submit a preliminary decommissioning cost estimate that includes, *inter alia*, a plan for adjusting decommissioning funds to demonstrate that funds will be available when needed to cover decommissioning costs. The regulation at 10 CFR 50.82(a)(4)(i) require a licensee to submit a post-shutdown decommissioning activities report before or within 2 years following permanent cessation of operations. The report:

...must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a site-specific DCE [decommissioning cost estimate], including the projected cost of managing irradiated fuel.

The NRC staff analyzes biennial decommissioning funding reports to determine that sufficient funding for radiological decommissioning of a facility will be available at the time of permanent termination of operations. The NRC takes appropriate actions to address decommissioning funding shortfalls on a case-by-case basis. These NRC staff actions include discussions with a licensee to develop a plan of action to resolve a decommissioning funding shortfall. Because a shortfall in decommissioning funding does not affect safe operations of a

nuclear plant, the NRC provides a licensee time to resolve a shortfall.<sup>3</sup> However, adequate decommissioning funding is important to ensure a plant is decommissioned safely and without the expenditure of public funds. For this reason, the NRC monitors the status of decommissioning funds and, when necessary, requires additions to decommissioning trust funds through parent company guarantees, cash deposits, or other methods permitted under 10 CFR 50.75(e)(1) or with the approval of the Commission.

Entergy Nuclear Operations Inc.'s (ENO's) Financial Qualification

The regulations at 10 CFR 50.80, stipulate that NRC approval is required for transfer of control of the ownership and/or operating authority responsibilities within the facility operating license. The NRC approved the transfer of operating authority to ENO for FitzPatrick, Pilgrim, and Vermont Yankee. As a result of its review, the NRC staff determined that ENO is financially qualified to hold the operating authority under the licenses for FitzPatrick, Pilgrim, and Vermont Yankee. The following table provides a summary of the NRC staff's conclusions regarding ENO's financial qualification to hold the operating authority for each facility license.

<b>Facility</b>	<b>NRC Staff's Conclusion</b>
<b>FitzPatrick<sup>4</sup></b>	According to the application, Entergy Nuclear FitzPatrick, as the proposed owner of FitzPatrick, has committed to assume full financial responsibility for funding the safe operation of the plant. The application states that ENO will operate FitzPatrick at cost and Entergy Nuclear FitzPatrick will reimburse ENO for its costs of operation under the terms of an operating agreement. Since the NRC staff has determined that Entergy Nuclear FitzPatrick is financially qualified under 10 CFR 50.33(f) to hold the license for the FitzPatrick plant, the staff concludes that ENO has satisfied applicable financial qualification requirements and that there are no financial qualification issues with regard to ENO.
<b>Pilgrim<sup>5</sup></b>	The application represents that under the Operating Agreement included

<sup>3</sup> See VR-SECY-11-0133 – “Options to Evaluate Requests to Use Discounted Parent Company Guarantees to Assure Funding of Decommissioning Costs for Power Reactors.” (February 27, 2012) (ADAMS Accession No. ML12058A179).

<sup>4</sup> Order Approving Transfer of License from the Power Authority of the State of New York to Entergy Nuclear FitzPatrick, LLC, and Entergy Nuclear Operations, Inc., and Approving Conforming Amendment (TAC NO. MA8949) dated November 9, 2000 (ADAMS Accession No. ML003768011).

as part of the application, ENGC [Entergy Nuclear Generation Company] will continue to provide all funds to ENO for the safe operation and maintenance of Pilgrim station, including the funds necessary to ensure the ability of ENO to comply with the facility operating license, technical specifications, materials license, and commitments to the NRC. ENGC will continue to be responsible for all financial protection as required by 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," and site insurance coverage as required by 10 CFR 50.54(w), "Conditions of Licenses."

The staff's analysis of the data supplied indicates that ENGC and, in turn, ENO have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license.

The NRC staff finds that ENO is financially qualified to hold the operating authority under the Pilgrim station license.

**Vermont Yankee<sup>6</sup>**

According to the application, ENO will operate VY [Vermont Yankee] at cost and be reimbursed by Entergy Nuclear VY for such costs pursuant to the terms of an operating agreement that was submitted with the application. In essence, while ENO may be nominally responsible for costs, Entergy Nuclear VY will have the full financial responsibility for funding the safe operation of the facility. The staff has determined that Entergy Nuclear VY is financially qualified to hold the license as the owner of the facility, in that sources of revenues to cover estimated costs are identified. In addition, the existence of the cost pass-through contract provides reasonable assurance that ENO will obtain the funds necessary for the estimated operation costs for the license period. For these reasons, the staff concludes that ENO is financially qualified to hold the operating authority under the license.

As previously stated, once the NRC staff determines that an applicant is financially qualified to conduct the activities under the license, the NRC conducts ongoing reviews of a licensee by screening various public sources for business, finance, and economic news throughout the terms of the license for any indications that the licensee may not have sufficient financial resources to operate their plants safely. ENO remains financially qualified to hold the

<sup>5</sup> Order Approving the Transfer of Operating Authority under Facility Operating License and Transfer of Materials License for Pilgrim Nuclear Power Station from Entergy Nuclear Generation Company to Entergy Nuclear Operations, Incorporated (TAC No. MD2843), dated March 15, 2002 (ADAMS Accession No. ML013410065).

<sup>6</sup> Order Approving Transfer of License for Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and Approving Conforming Amendment (TAC No. MB3154) dated May 17, 2002 (ADAMS Accession No. ML020390198).



operating authority under the licenses for FitzPatrick and Pilgrim. Vermont Yankee has permanently ceased operations.

#### Evaluation of ENO's Financial Condition

By letter dated June 2, 2014 (ADAMS Accession No. ML13357A024), the PRB sent a request for voluntary information to ENO on its current financial status. The NRC staff asked ENO to: (1) provide updated cost and revenue projections and cashflow statements for FitzPatrick and Pilgrim, (2) confirm that certain contingency commitments were still in effect for FitzPatrick and Pilgrim, (3) update its response to an earlier request for additional information concerning impairment for Vermont Yankee disclosed in a November 2012, 10-Q filing to the SEC, and (4) provide the current operating agreements and/or intra-corporate arrangements among and between FitzPatrick, Pilgrim, Vermont Yankee, and ENO related to financing the operating and maintenance costs for NRC licensed activities (ADAMS Accession No. ML072220219).<sup>7</sup>

By letter dated July 24, 2014 (ADAMS Accession No. ML14212A050), ENO asserted that it believes the 2.206 petition does not provide a basis for an inquiry into cost and revenue projections or cash flow statements for FitzPatrick and Pilgrim. The licensee, however, explained that the revenues for FitzPatrick and Pilgrim reported to the SEC, as "Entergy Wholesale Commodities" in the Entergy Corporation's 10-K filings, demonstrate positive revenues and net income for wholesale electricity since Entergy Corporation began reporting on wholesale electricity costs.

The licensee also indicated that corporate revenues from other ENO sources are available, if needed, to cover operational expenses at FitzPatrick and Pilgrim. In addition, ENO indicated that Entergy Nuclear FitzPatrick, LLC (ENF), and ENGC have credit support

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<sup>7</sup> ENO referred to these agreements in its July 30, 2007, license transfer application.

agreements or parent guarantees in place to provide adequate funds for operations at both FitzPatrick and Pilgrim, as discussed below. The licensee stated that “[ENF and ENGC] have never needed to draw, nor actually drawn, upon the funds provided by these agreements.”

The licensee confirmed that FitzPatrick’s License Condition 2.G is in effect and is guaranteed by Entergy Global, LLC (formerly Entergy Global Investments, Inc.), and Entergy International Ltd., LLC. FitzPatrick’s License Condition 2.G states the following:

ENF 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 [Power Authority of the State of New York] to ENF and ENO, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

The licensee also confirmed that Pilgrim’s License Condition J.4 is in effect and is guaranteed by Entergy International Ltd., LLC. Pilgrim’s License Condition J.4 provides the following:

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.

After evaluating this additional information provided by ENO, the NRC staff continues to believe that ENO has access to funding to safely operate FitzPatrick and Pilgrim.

### Evaluation of ENO's Decommissioning Funding Status Reports

The NRC staff analyzed the 2013 decommissioning funding status reports for FitzPatrick, Pilgrim, and Vermont Yankee and concluded that all three facilities met the minimum financial assurance requirements of 10 CFR 50.75(c)—no decommissioning fund shortfalls were reported. SECY-13-0105, "Summary Findings Resulting from the Staff Review of the 2013 Decommissioning Funding Status Reports for Operating Power Reactor Licensees" (ADAMS Accession Nos. ML13266A084 and ML13266A089), provides a summary of the NRC staff's analysis of all decommissioning funds, including the FitzPatrick, Pilgrim, and Vermont Yankee funds.

By letter dated March 30, 2015 (ADAMS Accession No. ML15092A141), ENO submitted its biennial decommissioning funding status report for FitzPatrick, Pilgrim, and Vermont Yankee. The NRC is currently reviewing these reports.

### Addressing Other Issues Raised by the Petitioners

FitzPatrick Unplanned Power Changes – The NRC staff has not identified any operational issues at FitzPatrick that raise questions about the ability of the plant to operate safely. Unplanned power changes caused by main condenser tube leaks were reported by ENO in January 2013. The NRC staff analyzed the main condenser tube leakage issues and the resulting power changes at Fitzpatrick and found no safety concerns. The licensee has replaced the circulating water tubes with titanium tubes in the main condenser. The NRC staff evaluated the plant modification and no findings were identified as noted in the NRC Integrated Inspection Report 05000333/2014005, dated February 6, 2015 (ADAMS Accession No. ML15037A280). This plant modification represents a significant capital project, which further demonstrates ENO's financial capability and willingness to allocate funds for the purchase of equipment to maintain safe operations at FitzPatrick.

Safety Conscious Work Environment (SCWE)—In its November 13, 2013, supplement, the petitioners provided news articles reporting that the licensee planned to lay off employees at Pilgrim. The petitioners expressed concern that the Pilgrim SCWE could be affected by a potential workforce reduction.

As part of the ROP, the NRC determines whether a substantive cross-cutting issue (human performance, problem identification and resolution, and SCWE) exists at each operating reactor during the NRC staff's mid-cycle and end-of-cycle assessments. If the NRC determines that a substantive cross-cutting issue exists, the NRC staff summarizes the issue and the necessary actions to resolve the issue in an assessment letter to the licensee.

As part of the problem identification and resolution biennial baseline inspection, the NRC staff assesses the licensee's SCWE. In the most recent 95002 inspection at Pilgrim in May 2015, there were no SCWE concerns identified. Based on the interviews the inspectors conducted over the course of the inspection, observations of plant activities, reviews of individual corrective action program and employee concerns program issues, the inspectors did not identify any indications that site personnel were unwilling to raise safety issues nor did they identify any conditions that could have had a negative impact on the site's SCWE. As noted in Inspection Report 05000293/2014008, the NRC staff did not identify any evidence of an unacceptable SCWE at Pilgrim or significant challenges to the free flow of information. The NRC staff also assessed the SCWE at FitzPatrick and Vermont Yankee. As noted in Inspection Report 05000333/2014009, the inspectors "found no evidence of significant challenges to FitzPatrick's safety conscious work environment. Based on the team's observations, FitzPatrick staff is willing to raise nuclear safety concerns through at least one of the several means available." Also, the inspectors "did not identify any indications that site personnel were unwilling to raise safety issues nor did they identify any conditions that could have had a

negative impact on Vermont Yankee's safety conscious work environment," as stated in Inspection Report 05000271/2013008.

Vermont Yankee Shutdown—By letter dated December 19, 2014 (ADAMS Accession No. ML14357A110), the licensee submitted the post-shutdown decommissioning activities report (PSDAR) for Vermont Yankee, in accordance with 10 CFR 50.82(a)(4)(i). The PSDAR contains: (1) a description and schedule of the planned decommissioning activities, (2) a discussion on the environmental impacts of decommissioning, (3) a site-specific decommissioning cost estimate, and (4) a settlement agreement between ENO, ENVY, and the State of Vermont. Although the NRC's regulations do not require formal NRC staff approval of the PSDAR, the NRC staff is currently reviewing the PSDAR to ensure that it meets the content requirements of 10 CFR 50.82(a)(4)(i).

By letter dated January 12, 2015 (ADAMS Accession No. ML15013A426), the licensee provided certifications to the NRC that (1) power operations at Vermont Yankee were permanently ceased effective December 29, 2014, and (2) spent reactor fuel has been permanently removed from the Vermont Yankee reactor vessel and placed in the spent fuel pool.

### III. CONCLUSION

The petitioners requested an immediate suspension of operations at FitzPatrick and Vermont Yankee to protect the public health and safety. Subsequent to the petitioners' request, ENO permanently shut down Vermont Yankee. As previously stated, the NRC relies on multiple engineered barriers and several levels of reactor oversight that are in NRC regulations to provide reasonable assurance of adequate protection of public and health and safety and the environment. Emergent safety concerns are promptly identified and assessed through the NRC's ROP. The ROP requires that licensees take prompt corrective action to resolve identified safety concerns. In addition, permanent onsite NRC resident inspectors monitor the day-to-day operations at the plants, which provide an additional assurance of safe operation. FitzPatrick was found to be operating safely and additional actions are not required for the protection of public health and safety and the environment. Therefore, the petitioners' request to shutdown FitzPatrick was denied.

The petitioners also requested an investigation to determine whether ENO possesses sufficient funds to cease operations and decommission FitzPatrick and Vermont Yankee in accordance with 10 CFR 50.75. The NRC staff's review of the 2013 Biennial Decommissioning Funding Status Report, determined that ENO provided reasonable assurance that sufficient funding for radiological decommissioning of FitzPatrick and Vermont Yankee will be available for the decommissioning process. The licensee has permanently ceased power operations at Vermont Yankee, partly because ENO deemed it uneconomic to continue operations. Because the NRC staff has independently determined that both Fitzpatrick and Vermont Yankee have sufficient funding available for decommissioning, the NRC staff finds that no further investigation into ENO's financial status is necessary to ensure the protection of the public health and safety and the environment.

Finally, the petitioners requested an investigation of ENO's current financial qualifications to determine whether the licensee remains financially qualified to continue operations at Pilgrim, in accordance with 10 CFR 50.33(f)(5). As discussed above, the NRC does not routinely review the financial qualifications of power reactor licensees after the issuance of an operating license. However, the NRC does employ a process of monitoring licensees throughout the terms of their licenses for any indications that they may not have sufficient financial resources to operate their plants safely. Additionally, the NRC staff conducts financial qualification reviews of license transfers to ensure that the new licensees meet NRC requirements. The regulations at 10 CFR 50.33(f)(5) allow the NRC staff to request a licensee to submit more detailed information concerning its financial arrangements and funding. The petitioners' request to examine whether ENO is financially qualified to operate Pilgrim was granted.

The NRC staff requested additional financial information on the adequacy of Pilgrim's operational funding. The licensee responded that, in accordance with License Condition J.4, access to \$50 million is available to maintain safe operations at Pilgrim and Entergy International, Ltd., is the guarantor of this sum. The NRC staff reviewed the information provided by ENO and found that the licensee's current financial condition is adequate and allows for the continued safe operation at Pilgrim.

By Order dated March 15, 2002, the NRC staff noted that ENGCO would continue providing all funds to ENO for the safe operation and maintenance of Pilgrim, and concluded that ENO is financially qualified to hold the operating authority under the Pilgrim license. The licensee, ENO, remains financially qualified to hold the operating authority under the Pilgrim license.

As provided in 10 CFR 2.206(c), a copy of this director's decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 27<sup>th</sup> day of August, 2015.

For the Nuclear Regulatory Commission

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William M. Dean, Director,  
Office of Nuclear Reactor Regulation.



COMMENTS RECEIVED FROM THE PETITIONERS  
ALLIANCE FOR A GREEN ECONOMY  
CITIZENS AWARENESS NETWORK  
PILGRIM WATCH  
VERMONT CITIZENS ACTION NETWORK  
BY LETTER DATED APRIL 27, 2015  
(ADAMS ACCESSION NO. ML15128A023)

Comment 1—Proposed Director's Decision Misrepresents and Ignores Requested Actions

The proposed decision misrepresents and improperly circumscribes the first request made in the March 18 petition: the immediate suspension of the licenses for FitzPatrick and Vermont Yankee.

Response:

The proposed director's decision repeated the Petition Review Board's (PRB's) final conclusion, as reflected in the August 7, 2013, acknowledgement letter. It states:

On April 8, 2013, the PRB met internally to discuss your request for immediate action. On April 15, 2013, the Office of Nuclear Reactor Regulation (NRR) petition manager informed you of the PRB's decision to deny the request for immediate action, concluding that Entergy's financial situation does not pose an immediate danger to public health and safety and the environment.

No further actions were needed. No changes were made to the final director's decision as a result of this comment.

Comment 1.a

NRC must undertake an investigation of the safety-conscious work environment and quality assurance and quality control programs at Vermont Yankee, FitzPatrick, and Pilgrim.

Response:

As stated in the proposed director's decision,

As part of the problem identification and resolution biennial baseline inspection, the NRC staff assesses the SCWE. In current and past inspection reports, the NRC staff found no evidence of an unacceptable SCWE at Pilgrim and no significant challenges to the free flow of information.

This statement is also true for FitzPatrick and Vermont Yankee. In the event that an issue is identified, the quality assurance and control, as it relates, would be assessed. The final director's decision was modified to include the U.S. Nuclear Regulatory Commission (NRC) staff's assessment of FitzPatrick's and Vermont Yankee's SCWE.

Comment 1.b

NRC's investigation of Entergy's financial qualifications must include a detailed audit of planned and anticipated capital expenditures at each of the reactors, as well as a cost and amortization schedule for each capital project.

Response:

The NRC staff determined that this action was not needed.

The NRC staff reviewed the information provided by the licensee to evaluate ENO's financial condition. The NRC staff found that adequate financial resources are available to ENO to continue safe operation.

No changes were made to the final director's decision as a result of this comment.

Comment 1.c

NRC [should] incorporate performance data in [the] financial qualifications investigation for FitzPatrick and Pilgrim to determine whether there is a causal or compounding relationship between Entergy's economic considerations and operational problems.

Response:

The NRC staff determined that this action was not needed.

The NRC staff reviewed the information provided by the licensee to evaluate ENO's financial condition. As described in the proposed director's decision, the NRC staff found that adequate financial resources are available to ENO to continue safe operation.

No changes were made to the final director's decision as a result of this comment.

Comment 1.d

NRC [should] obtain detailed information from Entergy regarding all of its corporate entities and incorporate it in the investigation of the licensees' financial qualifications, and to make such information available to the public.

Response:

As stated in the proposed director's decision, the licensee identified ENO's sources for corporate revenues to cover operation expenses at FitzPatrick (Entergy Global, LLC and Entergy International Ltd., LLC—\$70 million) and Pilgrim (Entergy International Ltd., LLC—\$50 million).

No changes were made to the final director's decision as a result of this comment.

Comment 1.e

Include analysis of internal financial transactions and cash flows among Entergy subsidiaries in the investigation of the licensees' financial qualifications.

Response:

The NRC staff determined that that this action was not needed.

The NRC staff reviewed the information provided by the licensee to evaluate ENO's financial condition. As described in the proposed director's decision, the NRC staff found that adequate financial resources are available to ENO to continue safe operation.

No changes were made to the final director's decision as a result of this comment.

Comment 2—Proposed Director's Decision Fails to Address Evidence Submitted by Petitioners

The proposed decision's acceptance of the information on Entergy Wholesale Commodities business unit in the 10K SEC filings is completely immaterial to the licensees' financial qualifications and represents a refusal on the part of NRC to conduct a meaningful investigation of the petition.

Response:

The NRC staff reviews the financial qualifications for each applicant for construction permits, operating licenses, and license transfers. The NRC staff determined that ENO is financially qualified to operate FitzPatrick in November 2000, Pilgrim in March 2002, and Vermont Yankee in May 2002. The licensee remains financially qualified.

The NRC does not regulate or provide oversight of commerce, and does not review commercial activities and decisions of its licensees unless such actions may impact safety. However, the NRC staff does conduct ongoing reviews of all licensees by screening trade papers, industry newsletters, and various public sources for business, finance, and economic news.

The licensee stated that the Entergy Wholesale Commodities segment has reported positive revenues and net income for FitzPatrick and Pilgrim since the 2013 10-K and first quarter 10-Q filings made with the SEC. To further demonstrate that adequate funds are available to safely operate FitzPatrick and Pilgrim, the licensee also stated that substantial credit support agreements or parent guarantees are in place and funds have never been drawn upon.

The NRC staff reviewed the information provided by the licensee to evaluate ENO's financial condition. The NRC staff found that adequate financial resources are available to ENO to safely operate FitzPatrick and Pilgrim.

The final director's decision was modified to make the clarification that the NRC staff evaluated ENO's financial condition.

Comment 3—Proposed Director’s Decision Fails to Evaluate Substantive Issues

By limiting the scope of the review to a small handful of narrowly proscribed examples of our concerns, [the] NRC has ignored not just the substantive evidence Petitioners presented, but the substantive analysis that demonstrates the need for NRC to deviate from its standard regulatory practice to address significant safety issues arising from changing real-world conditions affecting the licensees.

Response:

The NRC staff regulates its licensees within its authority. The NRC staff’s regulatory evaluation is performed in accordance with NRC-approved guidance, based on the NRC regulations.

No changes were made to the final director’s decision as a result of this comment.

Comment 4 - Proposed Decision Represents Failure to Comply with Atomic Energy Act

The proposed director’s decision denies our request for enforcement action on a regulatory theory that contradicts the agency’s application of 10 CFR 50.33 and the Atomic Energy Act.

Response:

The Atomic Energy Act of 1954 (the Act), as amended, empowers the NRC to establish by rule or order, and to enforce, such standards to govern civilian use of nuclear materials and facilities, as “the Commission may deem necessary or desirable in order to protect health and safety and minimize danger to life or property.”

For operating license applications, the Act requires that each applicant provide information necessary to decide the technical and financial qualifications of the applicant, as deemed appropriate by the Commission. The NRC’s regulations at 10 CFR 50.33, “Contents of Applications; General Information,” provide the required information needed in the application. The NRC staff reviews the financial qualifications for each applicant for construction permits, operating licenses, and license transfers.

The petitioners did not provide evidence that proves that (1) ENO is not in compliance with the NRC regulations, or that (2) ENO’s financial situation poses a danger to public health and safety and the environment. Therefore, the NRC staff is fulfilling its duty to comply with the Act by not executing an enforcement-related action against FitzPatrick and Pilgrim operating licenses.

Comment 4.a

The petitioners have provided material and substantive information meeting a higher standard of evidence than NRC deemed necessary to warrant the issuance of the March 20 RAI [request for additional information issued to Vermont Yankee]. It is therefore inexplicable that NRC would not conduct an analysis of that evidence in reviewing our petition, and that it would not warrant

the issuance of substantive RAIs to Entergy, rather than the mere request for voluntary information issued in June 2014.

Response:

The March 20, 2013, RAI (ADAMS Accession No. ML13077A206) issued to Vermont Yankee, while in operation, was in support of an internal NRC staff review, unrelated to your petition. In support of the PRB's review of your petition, similar questions were issued to Entergy in regard to FitzPatrick and Pilgrim. The content of the questions were within the purview of the NRC regulatory framework. However, while the 2.206 petition review process allows the NRC staff to request supporting information from the licensee, it does not require a response. Any information provided by the licensee is provided voluntarily.

No changes were made to the final director's decision as a result of this comment.

Comment 4.b

Judge Rosenthal challenged NRC staff's assertions that the 2.206 process affords members of the public a meaning[ful] avenue for obtaining substantive relief for concerns about nuclear safety and licensee compliance with the regulations. Based on a review of information on 2.206 petition cases presented by NRC staff at the judge's request, ALJ Rosenthal concluded that the evidentiary record indicates that NRC has provided little or no reason for the public to have confidence that the 2.206 [process] is likely to provide substantive relief.

Response:

Judge Rosenthal's opinion was not shared by the majority of the Atomic Safety and Licensing Board. In LBP-12-14, 76 NRC 8 (2012) (ADAMS Accession No. ML12192A239), it states, "Judges Hawken and Baratta find that the record before the Board falls far short of rebutting the presumption that 10 CFR § 2.206 is a meaningful avenue for seeking administrative relief."

Additionally, in CLI-14-11, 80 NRC 179 (2014) (ADAMS Accession No. ML14353A114), the Commission stated that the 2.206 "process provides stakeholders a forum to advance their concerns and to obtain full or partial relief, or written reasons why the requested relief is not warranted. And, as we have explained, we consider a section 2.206 petition a meaningful vehicle through which the public may seek review of safety-related concerns."

The NRC regulations at 10 CFR 2.802 offer the opportunity for any interested party to file a petition for rulemaking. No changes were made to the final director's decision as a result of this comment.

Comment 5—Citizens Awareness Network Response Concerning Proposed Director’s Decision on Issues Pertaining to Vermont Yankee

In terms of the shuttering and decommissioning of Vermont Yankee, the Agency’s generic approach to determine Entergy’s financial qualifications to operate and decommission Vermont Yankee is incomprehensible.

Response:

The NRC staff determined that ENO was financially qualified to operate Vermont Yankee in May 2002. However, as of December 29, 2014, Vermont Yankee permanently ceased power operations.

As discussed in the proposed director’s decision, the March 29, 2013 (ADAMS Accession No. ML13092A121), decommissioning funding status report for Vermont Yankee was analyzed by the NRC staff using the governing regulations. The staff concluded that Vermont Yankee met the minimum financial assurance requirements in 10 CFR 50.75(c)—no decommissioning fund shortfalls were reported. By letter dated March 30, 2015 (ADAMS Accession No. ML15092A141), ENO submitted its biennial decommissioning funding status report for Vermont Yankee. It is currently under review.

No changes were made to the final director’s decision as a result of this comment.

Comment 6—Alliance for a Green Economy Response Concerning Proposed Director’s Decision on Issues Pertaining to FitzPatrick

The NRC Directors decision did not address our concerns that Entergy is not financially qualified to operate FitzPatrick.

Response:

In its November 9, 2000 (ADAMS Accession No. ML003768011) safety evaluation of the FitzPatrick operating license transfer, the NRC staff stated:

According to the application, Entergy Nuclear FitzPatrick, as the proposed owner of FitzPatrick, has committed to assume full financial responsibility for funding the safe operation of the plant... Since the NRC staff has determined above that Entergy Nuclear FitzPatrick is financially qualified under 10 CFR 50.33(f) to hold the license for the FitzPatrick plant, the staff concludes that ENO has satisfied applicable financial qualification requirements...

The NRC staff determined that ENO is financially qualified. The NRC does not routinely review the financial qualification of power reactor licensees after the issuance of an operating license. However, the NRC staff requested additional financial information from ENO on the adequacy of operational funding. The NRC staff reviewed the information provided by the licensee to evaluate ENO’s financial condition. The NRC staff found that adequate financial resources are available to ENO to continue safe operation.

No changes were made to the final director's decision as a result of this comment.

Comment 6.a:

In the proposed Directors Decision, [the] NRC claims it "employs multiple engineered barriers and multiple levels of reactor oversight that are in NRC regulations to provide reasonable assurance of adequate protection of public and health and safety and the environment. Emergent safety concerns are promptly identified and assessed through the NRC's Reactor Oversight Process (ROP). The ROP requires that licensees take prompt corrective action to resolve identified safety concerns."

Yet, in the case of FitzPatrick's condenser, the emergent safety concern was not corrected promptly. The NRC also failed to investigate the root cause of this issue to identify whether it resulted from Entergy's suspected violation of the financial qualifications regulation.

Response:

The NRC staff analyzed the main condenser tube leakage issues and the resulting power changes at Fitzpatrick and found no safety concerns. Although the condenser is not a safety-related component, the licensee replaced the main condenser tubes, which is a significant capital project. Regarding NRC financial regulations governing operations, such requirements exist and must be met by non-utility applicants only at the time of initial application and at the time of license transfer. As such, FitzPatrick was not in violation of any such financial qualification requirements. Therefore, an enforcement-related action authority does not exist.

No changes were made to the final director's decision as a result of this comment.

Comment 7—Pilgrim Watch Response Concerning Proposed Director's Decision on Issues Pertaining to Pilgrim

NRC failed to perform its statutory duty to protect public health and safety by assuring Entergy is financially qualified. We request NRC to go back to the drawing board and gather the facts necessary to provide assurance of Entergy's financial qualifications to operate and decommission Pilgrim Station safely and provide those facts in its decision.

Response:

The Act empowers the NRC to establish by rule or order, and to enforce, such standards to govern civilian use of nuclear materials and facilities, as "the Commission may deem necessary or desirable in order to protect health and safety and minimize danger to life or property."

For operating license applications, the Act requires that each applicant provide information necessary to decide the technical and financial qualifications of the applicant, as deemed appropriate by the Commission. The NRC staff reviews the financial qualifications for each applicant for construction permits, operating licenses, and license transfers.

In the NRC March 15, 2002 (ADAMS Accession No. ML013410065) safety evaluation of the Pilgrim operating license transfer, it states:

... the NRC staff finds that ENO is financially qualified to hold the operating authority under the Pilgrim Station license.

The NRC staff determined that ENO is financially qualified. There are no ongoing financial requirements that ENO must meet.

Additionally, the NRC staff reviewed the information provided by the licensee to evaluate ENO's financial condition. The NRC staff found that adequate financial resources are available to ENO to continue safe operation.

As stated in the proposed director's decision:

The NRC staff analyzes biennial decommissioning funding reports to determine that sufficient funding for radiological decommissioning of a facility will be available at the time of permanent termination of operations.

The March 29, 2013 (ADAMS Accession No. ML13092A121), decommissioning funding status report for Pilgrim was analyzed by the NRC staff using the governing regulations. The NRC staff concluded that Pilgrim met the minimum financial assurance requirements in 10 CFR 50.75(c)—no decommissioning fund shortfalls were reported. By letter dated March 29, 2015 (ADAMS Accession No. ML15092A141), ENO submitted its biennial decommissioning funding status report for Pilgrim. It is currently under review.



COMMENTS RECEIVED FROM THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
BY LETTER DATED APRIL 29, 2015

Comment 1—Inadequate and Defective Process

NRC's processing of the petitioners' claims in this proceeding has been inadequate and defective.

Response:

The 10 CFR 2.206 process is a public process. Any member of the public is afforded the opportunity through this process to seek enforcement action against an NRC licensee or certificate holder. The NRC staff conducted its review of the petition within its regulatory authority and in accordance with NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions." No changes were made to the final director's decision as a result of this comment.

Comment 1.a

Two Senators have asked NRC to explain the delay. Specifically on November 14, 2013 Senators Markey and Sanders wrote to the NRC Chairman... However, NRC has not answered the Senators' questions.

Response:

In a letter dated May 22, 2014, then-Chairman Allison M. Macfarlane responded to Senators Markey and Sanders.

Comment 2—Issues Not Addressed

The Proposed Decision does not address the current financial qualifications of Entergy to operate and decommission nuclear power plants.

The Proposed Decision does not address the current financial qualifications of Entergy to manage spent nuclear fuel.

The Proposed Decision does not address the current financial qualifications of Entergy to restore power plant sites.

Response:

Once the NRC staff determines that an applicant is financially qualified to conduct the activities under the license, the staff conducts ongoing reviews of all licensees by screening various public sources for business, finance, and economic news throughout the terms of the license for any indications that the licensee may not have sufficient financial resources to operate their plants safely. Additionally, the NRC staff's review of a license transfer application, governed by 10 CFR 50.80, "Transfer of Licenses," consists of assuring that the new licensed entity has the capability to meet the financial qualifications and decommissioning funding, and technical qualification aspects of the NRC regulations.

The NRC staff determined that ENO is financially qualified to operate FitzPatrick in November 2000, Pilgrim in March 2002, and Vermont Yankee in May 2002. The licensee remains financially qualified.

The NRC staff reviewed ENO's financial conditions. In accordance with 10 CFR 50.33(f)(5), the NRC may request information about a licensee's financial arrangements and status of funds. However, while the 2.206 petition review process allows the NRC staff to request supporting information from the licensee, it does not require a response. Any information provided by the licensee is provided voluntarily.

The NRC staff issued questions to the licensee on the adequacy of FitzPatrick's and Pilgrim's operational funding. The NRC staff reviewed the information provided by ENO and found that the licensee's current financial condition is adequate to continue safe operation at FitzPatrick and Pilgrim. Ultimately, the NRC's primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs.

SECY-13-0105 (ADAMS Accession Nos. ML13266A084 and ML13266A089) provides a summary of the NRC staff's analysis of the 2013 decommissioning funding status reports, including the FitzPatrick, Pilgrim, and Vermont Yankee funds. The NRC staff concluded that all three facilities met the minimum financial assurance requirements of 10 CFR 50.75(c)—no decommissioning fund shortfalls were reported. The costs of spent fuel management, site restoration, and other costs not related to decommissioning are not included in the financial assurance for decommissioning for nuclear reactors.

By letter dated March 29, 2015 (ADAMS Accession No. ML15092A141), ENO submitted its biennial decommissioning funding status report for FitzPatrick, Pilgrim, and Vermont Yankee. The reports are currently under NRC review.

Vermont Yankee has permanently shutdown. The licensee submitted the Post-Shutdown Decommissioning Activities Report (PSDAR) for Vermont Yankee, in accordance with 10 CFR 50.82(a)(4)(i). The PSDAR contains (1) a description and schedule of the planned decommissioning activities, (2) a discussion on the environmental impacts of decommissioning, (3) a site-specific decommissioning cost estimate, and (4) a settlement agreement between ENO, ENVY, and the State of Vermont. Although the NRC's regulations do not require formal NRC staff approval of the PSDAR, the NRC staff is currently reviewing the PSDAR to ensure that it meets the content requirements of 10 CFR 50.82(a)(4)(i).

No changes were made to the final director's decision as a result of this comment.

Comment 2.a

The Proposed Decision does not address Entergy Corporation's change of the legal nature of its subsidiary that owns Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Indian Point 2, LLC.

Response:

This action was not within the Petition Review Board's scope of review. No changes were made to the final director's decision as a result of this comment.

Comment 3—Unsupported Conclusions

The record does not support a conclusion that Entergy Nuclear Operations is financially qualified to operate the FitzPatrick Nuclear Power Plant or Pilgrim Nuclear Power Station.

The record does not substantiate the proposed conclusion that the FitzPatrick or Pilgrim facilities have the financial qualifications to operate.

Entergy Corporation's Submissions to the U.S. Securities and Exchange Commission do not substantiate ENO's current financial qualifications to operate the FitzPatrick or Pilgrim nuclear power plants.

Response:

Once the NRC staff determines that an applicant is financially qualified to conduct the activities under the license, the staff conducts ongoing reviews of all licensees by screening trade papers, industry newsletters, and various public sources for business, finance, and economic news throughout the terms of the license for any indications that the licensee may not have sufficient financial resources to operate their plants safely. The NRC staff determined that ENO is financially qualified to operate FitzPatrick in November 2000 and Pilgrim in March 2002. The licensee remains financially qualified. The NRC staff's conclusions regarding ENO's financial qualification for FitzPatrick and Pilgrim facilities are provided on pages 8 and 9 of the director's decision.

No changes were made to the final director's decision as a result of this comment.

Comment 4—New Information

The Federal Energy Regulatory Commission's April 14, 2015 Order instituting an examination of a proposed subsidy to support continued operation of the Ginna Nuclear Power Plant raises questions about the profitability of the FitzPatrick Nuclear Power Plant.

Response:

NRC regulations do not prohibit a nuclear power plant from operating at a financial loss. Unless there is evidence of a nexus between safety and financial qualifications or conditions of a license, NRC enforcement-related action authority does not exist.

No changes were made to the final director's decision as a result of this comment.

Comment 4.a

In recent days, Entergy has withdrawn lines of credit for Vermont Yankee.

Response:

The NRC staff found that there was no longer a need to provide lines of credit for operations and operational maintenance costs and that ENO has provided adequate assurance that funds will be available for radiological decommissioning and spent fuel management. Therefore, in the NRC letter dated April 16, 2015 (ADAMS Accession No. ML15097A361), the NRC staff concluded that it has no objection to the licensee's request for consent to cancel the two lines of credit.

No changes were made to the final director's decision as a result of this comment.

COMMENTS RECEIVED FROM THE LICENSEE  
ENTERGY NUCLEAR OPERATIONS, INC.  
BY LETTER DATED APRIL 23, 2015  
(ADAMS ACCESSION NO. ML15113B268)

Comment 1

The proposed decision on page 6 states the “most recent decommissioning funding status reports for FitzPatrick, Pilgrim and Vermont Yankee were submitted by March 31, 2013.” Since then, on March 30, 2015, ENO submitted updated decommissioning funding status reports for FitzPatrick, Pilgrim and Vermont Yankee (Accession No. ML15092A141). Those reports, again, demonstrate that all three facilities met the minimum financial assurance requirements of 10 CFR 50.75(c), and no decommissioning shortfalls were reported.

Response:

The March 30, 2015, decommissioning funding status reports for FitzPatrick, Pilgrim, and Vermont Yankee are currently under NRC review. The final director’s decision was modified to include this statement.