

Alliance for a Green Economy – Beyond Nuclear – Citizens Awareness Network – Nuclear Information and Resource Service – Pilgrim Watch – Vermont Citizens Action Network

October 15, 2014

Mark A. Satorius
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: 2.206 Petition Challenging Entergy's Financial Qualifications to Operate FitzPatrick, Pilgrim and Vermont Yankee reactors

Mr. Satorius:

On March 18, 2013, we submitted a 2.206 petition requesting that the Nuclear Regulatory Commission (NRC) enforce its financial qualifications regulation at Entergy's Vermont Yankee and Fitzpatrick nuclear reactors. We also requested the NRC investigate Entergy's Pilgrim reactor for compliance with that regulation.

In our petition and in multiple supplements that followed, we provided ample cause for concern that these reactors are not projected to generate enough revenue to support their operating expenses and that the market forces leading to losses at these reactors were likely to continue into the future. We built a strong record showing that Entergy does not have the financial qualifications to operate Vermont Yankee and FitzPatrick and that it may not have the financial qualifications to operate Pilgrim. Since the filing of our petition, Entergy has announced the closure of the Vermont Yankee reactor, citing economic losses, further supporting the basic facts and regulatory analysis in the petition.

Our petition and supplements also provide a strong case that NRC and the public should be concerned about financial strain at nuclear reactors leading to safety compromises and public endangerment. We have drawn attention to symptoms of that strain showing in operations at the nuclear plants in question.

As nuclear watchdogs, we have done everything within our power with every piece of information available to us to shine a light on an ongoing safety concern at these reactors. We continue to believe that Entergy has eroded and is eroding the safety and stability of these reactors as it cuts costs, lays off workers, and delays maintenance at these financially distressed reactors. We also maintain that the safety may be compromised at the company's profitable reactors if revenues from those reactors are necessary to cover shortfalls at financially strained reactors, as has been reported by sources cited in the petition and supplements and even suggested by Entergy itself in recent statements.

We have not been in a position to cite specific primary source data on the licensees' financial losses and failure to comply with the financial qualifications regulation because such information is still being withheld by Entergy. The information can only be unearthed by way of either a

formal investigation by the NRC or an administrative law proceeding, which has the power to compel Entergy to reveal the financial conditions of these reactors.

We were heartened when NRC accepted our petition for review and stated it would look into Entergy's financial qualifications to operate FitzPatrick, Pilgrim and Vermont Yankee. The NRC's acceptance of our petition signaled the agency would investigate these financial details and determine whether Entergy meets the financial qualifications requirements outlined by NRC for operating nuclear reactors.

On two occasions that we know of, Entergy has obstructed NRC staff efforts to obtain the information needed to assess whether Entergy is financially qualified to operate its reactors.

On the first occasion, according to a November 14, 2013 letter to NRC by Senators Bernie Sanders and Edward Markey, NRC staff shared with Entergy draft Requests for Additional Information (RAIs) about finances at all of Entergy's merchant reactors. In response, according to the Senators, Entergy convinced senior staff at NRC to quash the requests and to instruct lower level staff to abandon such inquiries.

When this news broke, we were very concerned that NRC was refusing to do its regulatory job to enforce the financial qualifications regulation, and we said as much in a subsequent supplement to our petition. We were relieved when on June 2, 2014, NRC did issue a request for information, asking Entergy, among other things, to voluntarily "provide updated cost and revenue projections and cash flow statements for Fitzpatrick and Pilgrim for the five year period of 2014- 2019."

The information requested by NRC in June is critical to fulfilling the investigation promised when NRC accepted our petition, and even more importantly, critical to NRC being able to enforce its financial qualifications regulation. It should not be forgotten that this regulation is one of the only tools that NRC has to *proactively* protect the public from the kinds of shortcuts, delayed maintenance, inadequate staffing, and other compromises that could naturally result from a company not having enough money to operate a nuclear reactor. As we have stated before, the intent of the Atomic Energy Act's statutory financial qualifications requirement, which 10 CFR 50.33 implements by regulation, is to prevent safety violations by precluding licensees from operating reactors under conditions of financial duress. If NRC fails to enforce the regulation, it fails the public, particularly when there is plain evidence that violations exist.

On July 24, 2014, Entergy filed a response to NRC's second request for financial information, in which the company again refuses to provide documentation of its finances at the reactors in question. (We note here that this response was never sent to the petitioners and was only recently discovered by us.) By refusing to provide the requested information, Entergy is obstructing NRC from performing its regulatory duty. It is true that Entergy has the option to ignore the request for voluntary information from NRC, but absent the licensees' cooperation, it leaves NRC with no option but to initiate an enforcement proceeding, per 10 CFR 50.33 and 10 CFR 50.110(a)(3). Entergy should not be allowed to avoid scrutiny by refusing to provide NRC with information necessary to determine whether it is in violation of regulations.

It should be noted that, in its July 2014 voluntary response, Entergy neither provided NRC with information about the profits and losses at its reactors nor a commitment from the parent company to cover shortfalls at its LLC subsidiaries. Entergy was explicit that no commitment has been made in the past or was being made.

Therefore, we reiterate our position that based on all available information, Entergy does not have the financial qualifications to operate FitzPatrick and that NRC must act to protect the public by revoking the operating license for the reactor. We also reiterate our position that Entergy is currently operating the Vermont Yankee reactor in violation of the financial qualifications regulation, and that even though operations at that reactor are scheduled to cease by the end of 2014, the public has been and is being endangered by NRC allowing the reactor to operate without sufficient funds or incentive to maintain the reactor. Finally, we reiterate our position that all available information points to Entergy lacking the financial qualifications to operate the Pilgrim reactor.

In addition to the information we have provided in past supplements, we hereby submit additional information about Entergy's finances and about the strategy the company has publicly stated it is pursuing to continue operations at its financially troubled merchant reactors. Further, we submit additional evidence of the financial situation at these reactors leading to a degradation of operations.

1. On September 9, 2014, it was reported that Morningstar issued a BBB credit rating for Entergy, indicating that the company is a moderate default risk. On October 13, Macquarie downgraded Entergy from "Outperform" to "Neutral," indicating a decline in confidence in the company. This is one more indication the financial analysts continue to question Entergy's profitability, and provides another reason NRC should question the company's financial qualifications to operate its marginal merchant reactors.
2. In recent presentations to investment firms, Entergy has emphasized its reliance on hedging strategies to mitigate poor financial returns from its merchant power operations. These presentations represent efforts by Entergy management to convince investors of the sophistication and effectiveness of Entergy Wholesale Commodities' ability to boost merchant revenues and mitigate cash flow losses due to the uneconomical operating costs of FitzPatrick, Vermont Yankee, and Pilgrim in the low market-price environment that prevails in New England and Central New York. However, as an investment and commodities trading practice, hedging activity is inherently risky. In addition, any additional revenues EWC derives from such activities are well "upstream" of the reactor-owner licensees. Not only does the financial qualifications standard review plan lack provision for such revenue sources, Entergy has stated plainly that there is no guarantee or promise that upstream revenues will be made available to the licensees. In addition, Entergy's reliance on hedging strategy does nothing to mitigate the strict cost discipline that must prevail within all of Entergy's merchant operations in order to minimize cash flow losses and investment risk. This new element of Entergy's business strategy to support its nuclear operations only underlines the need for a thorough investigation of Entergy's financial qualifications.

3. The attached filing to the New York Public Service Commission made by Entergy on April 30, 2014, contains memos to FitzPatrick workers from GMPO Brian Sullivan about each of the incidents of condenser leakage in the first quarter of 2014. The pertinent information is on pages 37, 48 - 50, 55, 56, 58, 67, 71, and 74. These memos underscore how workers at the plant were affected and were exposed to higher than necessary radiation doses due to Entergy's refusal to address its failing condenser in a timely manner. Though Entergy is supposedly replacing the condenser tubing during this current refueling outage, financial considerations may have caused Entergy to delay the obviously necessary maintenance to avoid an additional lengthy shutdown earlier in the cycle. Because the plant is operating under financial strain, Entergy likely decided it could not afford to shut down for maintenance on the condenser without further compromising the plant's profitability. This is exactly the type of situation we have been warning about in our petition.
4. We are concerned with a lawsuit that was filed against Entergy's Indian Point facility where an employee whistleblower is suing Entergy for sidelining him after he complained to authorities about security issues. In his complaint, Clifton "Skip" Travis Jr. alleges that Entergy allowed financial considerations to override good practice in implementing a new perimeter monitoring system without adequate training for staff. In his lawsuit, Mr. Travis says that the company rushed installation of a new security system in 2011 in order to avoid hefty fines from the NRC, and neglected important training components. He maintains that subsequent tests of the system under simulated terrorist attack, have resulted in consistent failure.
5. Entergy recently announced a potential 40% cutback in staff at Vermont Yankee by 2016. We are concerned that Entergy's choice to reduce its workforce so drastically is driven by its financial constraints. Vermont Yankee's fuel pool will remain operational until at least 2020. The filled to capacity fuel pool still poses a threat to the community from acts of malice as well as accidents. These threats were well documented by the National Academy of Science in a report on spent fuel management in 2005. In addition, with such drastic cuts, there is a potential to lose the institutional memory of employees undermining the effective site surveying and subsequent cleanup of the contaminated site.
6. Pilgrim Watch and Cape Downwinders filed a 2.206 Enforcement Petition on September 16, 2014, regarding insufficient land-based security at Pilgrim Station. The petition shows a strong connection between Entergy's financial distress and the company cutting corners on security. Petitioners listed fifteen (15) trespassing events on Pilgrim's owner-controlled property. Petitioners showed that there are weapons readily available that can do serious damage even when delivered from offsite. Security at nuclear reactors cannot be done on the cheap, and the petition shows that Entergy is shortchanging security as its finances deteriorate.

In the absence of a response from Entergy that refutes the evidence we have provided about the company's financial strain at FitzPatrick, Pilgrim and Vermont Yankee, we urge NRC to use the available information to find the company in violation of the financial qualifications regulation

and to revoke the operating licenses at these reactors. If NRC still has doubts as to the merit of our petition and needs more financial information to make a determination, we urge the agency to use its authority to compel Entergy to provide the financial information necessary for NRC to complete a thorough investigation.

Sincerely,

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