

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171
FAX: (802) 828-2154
TTY: (802) 828-3665
CIVIL RIGHTS: (802) 828-3657
WEBPAGE: www.atg.state.vt.us

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

January 27, 2015

William Dean, Director
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington D.C. 20555-0001

Re: Dockets 50333, 50271, and 50293; NRC Enforcement Proceeding No. 2013-0192

Dear Director Dean,

On December 2, 2013, the New York Attorney General's Office submitted a detailed filing in NRC Enforcement Proceeding No. 2013-0192. On October 20, 2014, the Massachusetts Attorney General's Office submitted another detailed filing in this same proceeding. Both of these filings formally requested that the NRC investigate the financial qualifications of Entergy Corporation's subsidiaries, which include Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., the owners and operators of the Vermont Yankee Nuclear Power Station (Vermont Yankee). The NRC does not appear to have responded to either of these requests. Through this letter, the Vermont Attorney General's Office joins New York and Massachusetts in asking the NRC to investigate the financial qualifications of Entergy Corporation's subsidiaries.

While Vermont Yankee recently disconnected from the electric grid, there are a number of immediate and long-term activities that will occur at the plant that could affect the safety of Vermonters. The State of Vermont has a direct interest in the NRC abiding by its statutory duty to ensure that Vermont Yankee's owners and operators have—and will continue to have—the ability to pay for these activities.

As explained in more detail below, the State of Vermont also has a direct interest in ensuring that Entergy, when financing certain post-closure activities, abide by applicable NRC regulations and contractual obligations, which limit the circumstances in which Entergy can withdraw funds from its Nuclear Decommissioning Trust (NDT) Fund. To determine whether Entergy—either through subsidiaries or the parent corporation—has adequate financial means without undue or unauthorized reliance on the NDT Fund, the NRC should fully investigate the financial qualifications of Entergy and its subsidiaries, including directing Entergy to respond to the issues raised by the Attorneys General of New York and Massachusetts.

Vermont also retains a strong interest in how Entergy intends to finance its obligations. Vermont Yankee is a merchant generator, and, now that it has ceased generating electricity, it has lost its sole source of revenue. In a number of recent public hearings and filings, including its January 6, 2015 request for an

exemption to allow it to use NDT funds for an estimated \$225 million in spent fuel management expenses (ADAMS ML#15013A171), Entergy has made clear that, except for a limited set of expenses that will be privately financed, it intends to try to use its NDT Fund to cover all other post-shutdown expenses.

This approach is problematic for at least two reasons. First, applicable NRC regulations do not allow Entergy to use NDT Funds for anything other than radiological decommissioning. Disbursements from the NDT Fund "are restricted to decommissioning expenses." 10 C.F.R. § 50.75(h)(1)(iv). All withdrawals must be "for legitimate decommissioning activities consistent with the definition of decommissioning in [10 C.F.R.] § 50.2." *Id.* § 50.82(a)(8)(i)(A). The NRC's definition of "Decommission" is limited to activities that "reduce residual radioactivity." 10 C.F.R. § 50.2. The NRC's regulations on the creation and use of NDT Funds explicitly state that these funds are intended to cover only radiological decontamination necessary for site closure: "Amounts [required to be set aside in the NDT Funds] are based on activities related to the definition of 'Decommission' in § 50.2 of this part and do not include the cost of removal and disposal of spent fuel or of nonradioactive structures and materials beyond that necessary to terminate the license." 10 C.F.R. § 50.75 n.1. Entergy is well aware of these restrictions and has thus stated publicly that it intends to seek an exemption from these applicable NRC regulations.

Second, the Vermont Yankee NDT Fund is subject to a Master Trust Agreement that Entergy signed when it purchased Vermont Yankee. The Master Trust Agreement places legal restrictions on when and for what purposes Entergy can withdraw money from the NDT Fund. Vermont ratepayers contributed the majority of the principal funds that currently exist in the NDT Fund, and Entergy has never contributed any money to that Fund. Further, Vermont ratepayers have an existing 55% interest in any leftover funds. The Master Trust Agreement places numerous restrictions on use of the NDT Fund, including requiring that all radiological decontamination and decommissioning as described above be complete before any leftover money from the NDT Fund can be used for spent fuel management or site restoration. And once radiological decontamination and decommissioning is complete, the only withdrawals allowed for spent fuel management costs are for expenses that were not recovered from the Department of Energy.

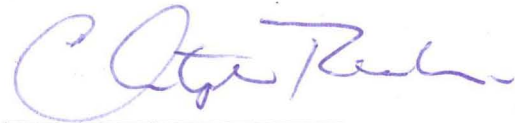
Entergy is responsible for the safe decommissioning of Vermont Yankee, and the NRC should ensure that Entergy has sufficient financial capacity to perform the necessary activities. The Master Trust Agreement requires Entergy to finance certain post-shutdown activities through means other than the NDT Fund. The NRC should thus fully investigate the financial qualifications of Entergy and its subsidiaries.

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



William E. Griffin
Chief Assistant Attorney General



Christopher Recchia, Commissioner
Vermont Department of Public Service

cc: Annette L. Vietti-Cook, Secretary of the Commission
John Sipos, Esq., New York Attorney General's Office
Melissa Hoffer, Esq., Massachusetts Attorney General's Office
Amy Shollenberger, Esq., representing Petitioner Citizens Awareness Network