

December 13, 2001

Ms. Christine S. Salembier, Commissioner
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601

SUBJECT: VERMONT YANKEE NUCLEAR POWER STATION - LINES OF CREDIT
ASSOCIATED WITH VERMONT YANKEE LICENSE TRANSFER (TAC NO.
MB3397)

Dear Ms. Salembier:

I am responding to your letter dated November 1, 2001, which sought answers to six questions related to the manner in which the U. S. Nuclear Regulatory Commission (NRC) reviews, approves, and manages use of letters or lines of credit that license transfer applicants provide in connection with demonstrating that they are financially qualified to own and safely operate a nuclear plant. The questions relate specifically to an application dated October 5, 2001 (Vermont Public Service Board Docket 6545), to transfer the operating license for the Vermont Yankee Nuclear Power Station (Vermont Yankee) to Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) and Entergy Nuclear Operations, Inc. (ENO).

In order to address your questions in the context of the NRC's requirements for, and policies relating to, a license applicant's financial qualifications, the NRC staff is providing the following background information. Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80 governs the process by which the NRC reviews and approves applications for the transfer of nuclear power plant licenses. This section states in part, "An application for transfer of a license shall include as much of the information described in Sections 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license...." Section 50.33(f) contains the NRC's requirements with respect to an applicant's financial qualifications. Specifically, in the case of an application for an operating license filed by an entity other than an electric utility, "the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first 5 years of operation of the facility." In the case of the transfer of an operating license, the NRC has interpreted this section to require the applicant to submit financial projections for the full 5 years following the expected completion date of the transfer.

The NRC's "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (NUREG-1577, Revision 1), contains a detailed discussion of how the NRC staff implements this requirement as it pertains to operating license transfers for non-electric-utilities. As described in Section III.1.b., "Operating License Reviews," an applicant would be found financially qualified if it can reasonably demonstrate that it has sufficient revenues (either from the sale of electric power from the nuclear plant or from other sources) to cover expected operational expenses at the plant. Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," provides additional

information on decommissioning funding assurance. We are enclosing a copy of these reference documents for your convenience. In its review, the NRC staff evaluates projections of plant capacity factors, the estimated price of electricity to be received from electricity sales, and operations, maintenance, and other costs at the plant. Unless an applicant cannot reasonably demonstrate that revenues meet or exceed expenses over the 5-year projection period (the "electricity supply and demand test"), the NRC's regulations do not require any additional assurance of financial qualifications (from, for example, lines or letters of credit from parent or affiliated companies of the transfer applicant).

The NRC is now reviewing Entergy Nuclear VY's application to purchase Vermont Yankee. Until the NRC completes that review, it cannot say whether Entergy Nuclear VY must rely on a line of credit from an affiliated company to meet the NRC's financial qualifications requirements. In past purchases of nuclear plants, Entergy Corporation (Entergy - ultimate parent of Entergy Nuclear VY and ENO) or affiliates thereof have offered lines of credit similar to that which has been offered in the Vermont Yankee transfer application. In these previous transfers, the NRC concluded that the proposed Entergy affiliated transferee demonstrated its financial qualifications based on the reasonableness of its 5-year projections and the assumptions underlying them. However, because the Entergy affiliated applicants offered to provide additional financial qualifications assurance through lines of credit from affiliated Entergy companies, the NRC accepted these guarantees in prior transfers involving Entergy, and required them to be in place as offered, as part of the conditions for approving the license transfers. Although the Entergy affiliated applicants provided adequate demonstration of financial qualifications in these prior transfers, without recourse to the lines of credit, the NRC concluded that requiring the lines of credit offered was appropriate in light of the additional assurance provided. The NRC will evaluate Entergy Nuclear VY's application to purchase Vermont Yankee on the merits of the specific application, using the requirements and criteria discussed in the referenced documents.

Enclosure 1 provides the staff's responses of your questions. If you have any further questions, please contact Robert M. Pulsifer, Project Manager, at (301) 415-3016.

Sincerely,

/RA/

Elinor G. Adensam, Director
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Enclosures: 1. Response to the State of Vermont
2. NUREG-1577, Rev. 1
3. Regulatory Guide 1.159

RESPONSES TO QUESTIONS ON VERMONT YANKEE FINANCIAL ASSURANCE

1. Please state what action NRC [Nuclear Regulatory Commission] will take if Entergy Nuclear Vermont Yankee reports use of the credit line in accordance with Mr. Kansler's commitment.

Response: The NRC would evaluate the reasons behind Entergy Nuclear Vermont Yankee's drawing on the lines of credit. The staff cannot provide a detailed discussion of potential agency actions until it learns the specific reasons for the usage of such funds. Generally, if drawings on the lines of credit were made to cover short-term cash flow deficiencies that did not appear to have any significant safety ramifications, the NRC would not likely need to take any specific action. If drawing on the lines of credit were to indicate serious longer-term financial problems that appeared to potentially adversely impact protection of public health and safety, the NRC would monitor the effects of any degradation on protection of public health and safety and act appropriately.

2. Please provide a copy of NRC's policy statement or procedure which controls how the agency considers reports of Limited Liability Corporations' usage of financial assurance funds.
3. If NRC does not have a policy statement or procedure that controls how the agency considers reports of Limited Liability Corporations' usage of financial assurance funds, please provide information and guidance available on how NRC would handle these reports.

Response to questions 2 and 3: The NRC has no specific policy statement or procedure on how limited liability companies or other types of licensees use financial assurance funds in the form of lines of credit for plant operation. NRC's criteria for evaluating the use of such funds by any type of power reactor licensee for decommissioning funding assurance are addressed in 10 CFR Sections 50.75 and 50.82. NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," (Enclosure 2) provides additional information on lines of credit and other guarantee methods in the context of decommissioning funding assurance. Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," (Enclosure 3) also provides information on this and other methods of providing decommissioning funding assurance.

4. Please state the basis upon which NRC would grant approval for Entergy Nuclear Vermont Yankee financial assurance funds to be reduced, replaced or withdrawn, if requested by Entergy Nuclear Vermont Yankee.

Response: The NRC cannot speculate on the basis upon which it would grant approval for Entergy Nuclear Vermont Yankee to reduce, replace, or withdraw financial assurance funds. As indicated in the background discussion in the cover letter forwarding these responses, the NRC is currently evaluating Entergy Nuclear Vermont Yankee's financial qualifications as part of its review of the license transfer application for Vermont Yankee. Until that review is completed, the NRC is unable to say whether, or in what amount, financial assurance funds would be required as part of any NRC

finding of financial qualification of Entergy Nuclear Vermont Yankee. However, if such funds are ultimately required as part of any order approving the Vermont Yankee license transfer, the NRC would review any request for the reduction, replacement, or withdrawal of such funds on a case-by-case basis taking into account such an action's impact on Entergy Nuclear Vermont Yankee's financial qualifications to safely operate Vermont Yankee.

5. Please provide a copy of NRC's policy statement or procedure which controls how the agency considers approval of requests of Limit[ed] Liability Corporations to reduce, replace or withdrawn its financial assurance funds.
6. If NRC does not have a policy statement or procedure which controls how the agency considers approval of requests of Limit[ed] Liability Corporations to reduce, replace or withdraw its financial assurance funds, please provide information and guidance on how NRC would handle these requests for approval.

Response to questions 5 and 6: Please see the responses to Questions 2 and 3. The NRC has no specific policy statement or procedure that controls how it would consider approval of requests of limited liability companies to reduce, replace, or withdraw available lines of credit that are subject to NRC conditions. NRC review of such a request would be done on a case-by-case basis, considering the specific factual situation of each such request.

information on decommissioning funding assurance. We are enclosing a copy of these reference documents for your convenience. In its review, the NRC staff evaluates projections of plant capacity factors, the estimated price of electricity to be received from electricity sales, and operations, maintenance, and other costs at the plant. Unless an applicant cannot reasonably demonstrate that revenues meet or exceed expenses over the 5-year projection period (the "electricity supply and demand test"), the NRC's regulations do not require any additional assurance of financial qualifications (from, for example, lines or letters of credit from parent or affiliated companies of the transfer applicant).

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Sincerely,

/RA/

Elinor G. Adensam, Director

Project Directorate I

Division of Licensing Project Management

Office of Nuclear Reactor Regulation

- Enclosures: 1. Response to the State of Vermont
2. NUREG-1577, Rev. 1
3. Regulatory Guide 1.159

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