

Catts, Michelle

From: Walpole, Robert W (rwalpol@entergy.com)
Sent: Monday, June 27, 2011 12:37 PM
To: Cataldo, Paul; Catts, Michelle
Subject: Distribution of Signed ENOC-11-00012 ENNE Response to RAls on Decommissioning Funding.
Attachments: ENOC-11-012 Decom RAI North.pdf

Attached for your information or use is the signed copy of the subject letter transmitted on 6/24/2011 to NRC.

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EXEMPTION 6
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<<ENOC-11-012 Decom RAI North.pdf>>

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Act, exemptions 6

FOIA- 11-0272

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RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION
RE 2011 DECOMMISSIONING FUNDING STATUS REPORT
FOR ENERGY NUCLEAR OPERATIONS, INC.

By letter dated March 31, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110940051), Entergy Nuclear Operations, Inc. (Entergy) submitted the 2011 Decommissioning Funding Status (DFS) Report for Indian Point Nuclear Generating Stations 1, 2, and 3, Vermont Yankee Nuclear Power Station, Pilgrim Nuclear Power Station, James A. FitzPatrick Nuclear Power Plant, and Palisades Nuclear Plant, as required under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.75(f)(1).

The Nuclear Regulatory Commission staff, in reviewing the submittal, had the following questions transmitted by letter dated May 25, 2011, ADAMS Accession No. ML111440234:

RAI #1: Amounts accumulated:

Provide the after-tax amounts of funds accumulated through December 31, 2010.

On March 31, 2011, Entergy did not state if the amounts of decommissioning funds accumulated were after-tax amounts.

The provisions of 10 CFR 50.75(f)(1) and (2) require the licensee to report the amount of funds accumulated to the end of the calendar year preceding the report.

Response:

ENOI's March 31, 2011 report of the trust fund amounts [Reference 1] complied with the reporting requirements of 10 CFR §50.75(f)(1) in that it reported the market value of the decommissioning trust funds as of December 31, 2010. The trust fund amounts reported in its March 31, 2011 submission were the trust amounts as of December 31, 2010 net of any material current income tax liability on *realized* gains, interest, dividends and other income of the trusts as discussed below.

RAI #1 does not define the meaning of "after-tax amounts." To be complete, Entergy Nuclear Operations, Inc. (ENOI) will answer RAI #1 in two ways. The first will assume consistent with the current reporting requirements that "after tax amounts" means trust balances less current taxes due and not paid as of December 31, 2010 on net *realized* gains, interest, dividends and other net taxable income of the decommissioning trusts for Indian Point Nuclear Generating Stations 1, 2 and 3 (IP-1, -2 and -3), Vermont Yankee Nuclear Power Station (VY), Pilgrim Nuclear Power Station (Pilgrim), James A. FitzPatrick Nuclear Power Plant (JAF), and Palisades Nuclear Plant (Palisades). The second will assume that "after-tax amounts" means a current estimate of the funds that would have been available, net of taxes that would have been due, if all of the decommissioning trust assets had been liquidated on December 31, 2010, using tax rates that were in effect as of December 31, 2010.

ENOI provides the following additional detail on the above-listed decommissioning trusts based on the assumption that the term "after tax amounts" means trust balances less taxes due on realized gains:

IP-3 and JAF

As described in the NRC's two orders approving the respective license transfers for IP-3 and JAF from the Power Authority of the State of New York (PASNY), PASNY retains "all rights, title, and legal and beneficial interest in the decommissioning trust fund for the facilit[ies], while the trust fund(s) would remain at all times committed to the decommissioning of" IP-3 and JAF. (See ADAMS Accession Nos. ML003767953 and ML003768011, at page 2 of the Orders Approving Transfer of License in each document). PASNY maintains a Master Decommissioning Trust (MDT) that holds investments for the eventual decommissioning of IP-3 and JAF in the IP-3 Unit Fund or the JAF Unit Fund, respectively. As an agency of the State of New York, PASNY incurs no income tax liability on the earnings of either the IP-3 Unit Fund or the JAF Unit Fund. Accordingly, the amounts reported as of December 31, 2010 of funds accumulated in the PASNY MDT for the decommissioning of IP-3 and JAF were after-tax amounts.

IP-1, IP-2, VY, Pilgrim and Palisades

IP-1, IP-2, VY, Pilgrim and Palisades are each beneficiaries of a MDT that holds assets in accounts (Funds) that are designated as either tax-qualified funds (QFs) or non tax-qualified funds (NQFs). The segregation is necessary to comply with tax laws that provide for a favorable tax regime for income taxes imposed on the taxable income of QFs.

NQFs

Each NQF is treated as a "Grantor" trust for income tax purposes. Consequently, the assets and the realized earnings of the NQF are regarded as owned directly by the owner of the plant, who is considered to be the Grantor. The Grantor is responsible both for including the realized earnings of the appropriate NQF in its taxable income and for the payment of income taxes imposed thereon. Accordingly, the amounts included in the reported amounts of funds accumulated through December 31, 2010 for all NQFs were net of taxes due on realized gains.

QFs

Each QF is treated as a separate corporate taxpayer that must file its own annual tax return on Form 1120-ND and pay its own income taxes. Each QF must make periodic installment payments of estimated income taxes during the year and pay any unpaid income tax for the previous year by March 15 of the following year.

The QFs for the specified plants made timely periodic tax payments in 2010, with the last payment being remitted to the Internal Revenue Service on or about December 15, 2010. In March 2011, the QFs for the specified plants remitted the following payments with respect to the balance of their 2010 tax liabilities:

IP-1	\$167,000
IP-2	\$197,000
VY	\$ 29,000
Pilgrim	\$233,000
Palisades	\$ 18,000

ENOI does not deem the foregoing true-up payments to be material when considering the available financial assurance. The March 2011 true-up tax payments all appear to be within the rounding margin described in Section 4.2.5 of LIC-205 Rev. 4, even after application of escalation, and therefore would not affect the NRC's analysis of available financial assurance even if they were to be considered when computing the "amount accumulated to the end of the calendar year" as described in 10 CFR §50.75(f)(1).

ENOI provides the following, additional detail on the above-listed decommissioning trusts based on the assumption that the term "after tax amounts" means trust balances less taxes due if all trust positions were liquidated on December 31, 2010:

Table 1 below shows the decommissioning trust fund balances as reported in the March 31, 2011 report and a current estimate of the funds that would have been available, net of taxes that would have been due (i.e. liquidation value), if all of the decommissioning trust assets had been liquidated on December 31, 2010, using tax rates that were in effect as of December 31, 2010. (The decommissioning trusts were not liquidated as of December 31, 2010.)

Table 1

Reactor	Decommissioning Trust Fund Balances as of 12/31/2010 (\$Millions)	Liquidation Values as of 12/31/2010 (\$Millions)
IP-1	286.86	277.74
IP-2	374.74	363.87
VY	474.22	457.65
Pilgrim	645.92	607.98
Palisades	271.16	272.71
Total	2,052.90	1,979.95

RAI #2: Annual amounts deposited:

Provide the annual amount deposited in your trust fund for decommissioning, as defined in 10 CFR 50.2, starting in 1999 for Indian Point Nuclear Generating Station 2, Vermont, Yankee Nuclear Power Station, and Palisades Nuclear Plant.

Pursuant to 10 CFR 50.75(e)(2), the NRC reserves the right to review the accumulation of decommissioning funds.

Response:

The following Table 2 presents the amounts accumulated in the decommissioning trust funds for IP-2, VY and Palisades as of the last day of the indicated years. The IP-2 Provisional Trust is the trust established pursuant to Condition 2 on page 4 of the NRC's Order Approving Transfer of Licenses for IP-1 and -2, dated August 27, 2001 (ADAMS Accession No. ML012250459). The table indicates "N/A," for not available, for dates preceding the acquisition of the subject plants from the prior owners. ENOI did not hold any decommissioning funds for the subject plants prior to their acquisition.

Table 2

<u>Date</u>	<u>IP-2</u>	<u>IP-2 Provisional</u>	<u>VY</u>	<u>Palisades</u>
12/31/99	N/A	N/A	N/A	N/A
12/31/00	N/A	N/A	N/A	N/A
12/31/01	\$237,876,846	\$25,205,059	N/A	N/A
12/31/02	\$232,029,341	\$25,415,199	\$315,845,264	N/A
12/31/03	\$256,118,105	\$25,606,611	\$354,401,338	N/A
12/31/04	\$272,037,545	\$25,912,735	\$372,801,191	N/A
12/31/05	\$281,054,358	\$26,376,905	\$384,495,679	N/A
12/31/06	\$303,006,159	\$27,432,990	\$416,535,152	N/A
12/31/07	\$320,254,155	\$29,205,358	\$439,566,534	\$257,911,852
12/31/08	\$283,014,338	\$29,386,037	\$372,012,078	\$218,804,876
12/31/09	\$312,547,700	\$29,678,250	\$428,369,569	\$245,265,910
12/31/10	\$344,624,023	\$30,114,228	\$474,217,269	\$271,155,506

The following Table 3 presents the amounts deposited into the decommissioning trust funds for IP-2, VY and Palisades during the indicated years. Years with no entries had no deposits.

Table 3

<u>Year</u>	<u>IP-1</u>	<u>IP-2</u>	<u>IP-2 Provisional</u>	<u>VY</u>	<u>Palisades</u>
1999					
2000					
2001			\$25,000,000		
2002					
2003					
2004					
2005					
2006					
2007					\$20,000
2008					
2009					
2010					