

April 13, 2012

James Kim, Project manager
Plant Licensing Branch 1-1
Division of Operating Reactor Licensing
Office of the Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Status of Decommissioning Funding for Vermont Yankee

Dear Dr. Kim:

On April 9, 2012, we received a copy of a letter from Entergy Nuclear Operations, Inc. (“Entergy”) to the NRC dated March 30, 2012 regarding the status of the decommissioning funding for plants operated by Entergy. Entergy in that letter informed the NRC that it was not providing a decommissioning status report on the Vermont Yankee Nuclear Power Station (“Vermont Yankee” or “plant”) pursuant to 10 CFR 50.75(f)(1) because it was not within 5 years of plant closure. Entergy stated that it had a renewed license from NRC until March 21, 2032 and did not plan to close the plant in 5 years, and thus, a report was not required on Vermont Yankee.

We are disappointed and disturbed that Entergy has unilaterally determined not to fulfill this reporting requirement. As you know, the federal license extending operation until March 21, 2032 is presently on appeal to the U.S. Court of Appeals for the D.C. Circuit. In addition, there is a state Certificate of Public Good process presently underway before the Vermont Public Service Board in which Entergy is the petitioner. We certainly appreciate the NRC’s continued acknowledgement of legitimate and important permitting processes at the state level and within a state’s jurisdiction. Recently the Vermont Federal District Court also confirmed this state authority, finding that the Court’s order does not “purport to define or restrict the State’s ability to decline to renew a certificate of public good on any grounds not preempted or violative of federal law, to dictate how a state should choose to allocate its power among the branches of its government, or pass judgment on its choices.”¹ Meanwhile, this federal court proceeding itself, which did find certain aspects of Vermont law preempted, is on appeal. All of these facts continue to raise the question of whether Vermont Yankee will operate within or beyond five years; we therefore find it difficult to understand why Entergy would seek to ignore the NRC’s decommissioning reporting requirement. We believe that Entergy should not be able to presume

¹ *Entergy Nuclear Vermont Yankee, LLC v. Peter Shumlin, et. al.*, United States District Court for the District of Vermont, Docket No. 1:11 –cv-99, Order of 1/19/2012, at 4.



it will be running beyond 5 years, but instead should continue to file the annual decommissioning status updates pursuant to federal regulations until these proceedings come to a conclusion.

Last year the NRC faced a similar situation, when Entergy by letter dated April 29, 2011, notified NRC that it would be unilaterally canceling its parent company guarantee for Vermont Yankee in light of the NRC license renewal. The Department wrote to NRC at that time expressing its concerns about the cancelation of the parent guarantee. NRC responded to Entergy on August 10, 2011 and determined that Entergy should not cancel the parent guarantee because,

. . . external factors may affect the licensee's decommissioning financial assurance. The reason for the NRC staff's decision is based on the ongoing civil court case *Entergy Nuclear Vermont Yankee v. Shumlin*, No. 11-cv-99 (D.V.T April 8, 2011)(*VY v. Shumlin*). Also, on June 23, 2011, the State of Vermont Department of Public Service submitted a letter to the NRC stating that Vermont is currently reviewing land use, power needs, alternatives, costs, economic impacts and reliability for any generation source and has not determined that Vermont Yankee meets the State criteria for continued operations (ADAMS Accession No. ML 11187A311). Depending on the outcome of Vermont's review and *VY v. Shumlin*, Vermont Yankee may no longer operate after March 21, 2012. Under that condition, the anticipated earnings during the renewal period would not be realized. Because of the uncertainty surrounding the plant's future, cancellation of the guarantee at this time would be premature.

Under the regulatory framework and rationale advanced by the NRC last summer, the situation has not changed. Indeed, the federal court specifically noted the state's continuing jurisdiction, as set forth above, and the Public Service Board process is underway with Entergy's full participation. There is no reason therefore, for Entergy to unilaterally assert that it is not "within 5 years of the projected end of its operation."² This strikes us as Entergy flouting both NRC regulations and state continuing authority. Entergy's actions to discontinue reporting under 10 CFR 50.75(f)(1) "would be premature" just as they were in the previous instance. Accordingly, we ask NRC to direct Entergy to continue submitting annual decommissioning trust fund status reports until the pending processes are completed.

Vermont appreciates NRC's monitoring of the decommissioning status of plants. States like Vermont want the necessary funding for decommissioning to be available when the plant shuts down, and regular and careful reviews of the status of the decommissioning fund are one step toward achieving that goal. We hope you agree that while uncertainty about Vermont Yankee's operations continues, an annual report on the status of decommissioning from Entergy is appropriate and necessary.

² 10 CFR 50.75(f)(1)

Very truly yours,



Sarah Hofmann
Deputy Commissioner

cc: Senator Patrick Leahy
Senator Bernie Sanders
Representative Peter Welch
William Dean, Regional Administrator
Christopher Wamser, Site Vice President at Vermont Yankee