



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 20, 2015

Mr. Kyle H. Landis-Marinello
State of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

The Honorable Christopher Recchia, Commissioner
Vermont Department of Public Service
112 State Street – Drawer 20
Montpelier, VT 05620-2601

SUBJECT: VERMONT YANKEE NUCLEAR POWER STATION – REGARDING ENTERGY'S
PRE-NOTICE OF DISBURSEMENT FROM DECOMMISSIONING TRUST

Dear Messrs. Landis-Marinello and Recchia:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of January 26, 2015, requesting that the NRC exercise its authority to provide a "written notice of objection" to the Bank of New York Mellon concerning the "Pre-Notice of Disbursement from Decommissioning Trust" submitted on December 30, 2014, by Entergy Nuclear Vermont Yankee, LLC (Entergy) and the Managing Director of the Bank of New York Mellon (BNYM).

In your letter, you observe that Entergy and the BNYM's request to release up to \$18,000,000 provides none of the specifics that are required for the NRC to determine whether the funds will be used appropriately and within the bounds of NRC regulations. You further note that Entergy and BNYM state that the noticed amount of withdrawal "will be used for unspecified "decommissioning planning costs." It is your assertion that, unless and until such time that Entergy and BNYM submit information to the NRC and to the State of Vermont confirming Entergy's request is allowable, BNYM should not release any funds from the Nuclear Decommissioning Trust Fund.

The NRC does not intend to issue a "written notice of objection" as you requested for the reasons specified below. Specifically, Title 10 of the *Code of Federal Regulations* (10 CFR) § 50.82(a)(8)(ii) states, in part, that "[i]nitially, 3 percent of the generic amount specified in § 50.75 ["Reporting and recordkeeping for decommissioning planning"] may be used for decommissioning planning." According to the most recent calculation performed by the NRC staff, the generic amount described in § 50.75(c) for Vermont Yankee Nuclear Power Station (VY) is \$620,842,653, reflecting the U.S. Bureau of Labor Statistics data as of December 31, 2013. The NRC staff found that the noticed \$18,000,000 falls within 3 percent of that generic amount (i.e., \$18,625,280). Furthermore, according to the "Pre-Notice of Disbursement from Decommissioning Trust" filed by Entergy and BNYM on December 30, 2014, the disbursement will be used as "payment for decommissioning planning costs," which is in compliance with § 50.82(a)(8)(ii). If the NRC becomes aware of any decommissioning fund expenditures not in accordance with the NRC regulations, the staff will take appropriate regulatory action to address the issue.

In addition to this matter, there are other matters pending before the NRC that concern the VY decommissioning trust fund. First, Entergy has submitted a license amendment request for VY to remove certain license conditions relating to restrictions on decommissioning fund investments. These conditions include, *inter alia*: (1) prohibitions on investments in VY or any other owner or operator of any nuclear power reactor or their affiliates, subsidiaries, successors or assigns; (2) a prohibition against VY being engaged as investment manager for the funds or giving day-to-day management direction for the funds' investments; (3) a requirement that the investment manager act as a "prudent investor"; (4) a requirement that no withdrawals be made, other than for ordinary administrative expenses, without prior 30-day written notice to the NRC; and (5) a prohibition on material amendments to the trust without pre-notice to the NRC. These existing license conditions pre-date a change to the NRC regulations that added the same conditions to § 50.75(h)(1). Note that § 50.75(h)(5) permits licensees to retain the license conditions or to amend the conditions to be consistent with the provisions in § 50.75(h)(1). Second, Entergy has requested exemptions from § 50.75 and § 50.82 that would permit withdrawals from the decommissioning trust fund for spent fuel management and site restoration. Both of the above-noted NRC reviews are in progress.

Finally, the NRC staff is reviewing the February 9, 2015, letter addressed to you from Entergy Nuclear Vermont Yankee, LLC, which discusses the use of decommissioning funds for spent fuel management planning, in order to determine whether the statements therein comport with the content and intent of the regulations.

The NRC understands your interest and concern in the pending decommissioning of VY and looks forward to continuing to work with all parties involved to ensure, first and foremost, the health and safety of the public. If you have any further questions or concerns, please contact Mr. James Kim, at (301) 415-4125 or by e-mail at James.Kim@nrc.gov.

Sincerely,



William M. Dean, Director
Office of Nuclear Reactor Regulation

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Sincerely,
/RA/

William M. Dean, Director
Office of Nuclear Reactor Regulation

Docket No. 50-271

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