UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-271-LA-3
	)	May 22, 2015
(Vermont Yankee Nuclear Power Station)	)	

THE STATE OF VERMONT'S REPLY TO NRC STAFF AND ENTERGY ANSWERS TO PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST

The State of Vermont ("State"), through the Vermont Department of Public Service, filed a Petition for Leave to Intervene and Hearing Request ("Petition") in this matter on April 20, 2015, raising four independent contentions.[1] The State now submits this reply to the U.S. Nuclear Regulatory Commission ("NRC") Staff ("Staff"), and Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (together, "Entergy") answers.[2]

In response to all four of the State's detailed contentions to Entergy's September 4, 2015 license amendment request ("LAR"), both Staff and Entergy raise two overarching objections: (1) that Contentions One and Two improperly challenge NRC regulations; and (2) that the State is raising issues that are beyond the scope of this LAR. Staff and Entergy are wrong on both counts. First, Contentions One and Two go to the *application* of NRC regulations *in this particular instance*, and are thus not a challenge to any underlying regulations themselves. To

[1] *See* State of Vermont's Petition for Leave to Intervene and Hearing Request ("Petition") (Apr. 20, 2015) (ADAMS Accession No. ML15111A087).

[2] Staff's Answer to State of Vermont's Petition for Leave to Intervene and Hearing Request ("Staff Answer") (May 15, 2015) (ML15135A523); Entergy's Answer Opposing Petition for Leave to Intervene and Hearing Request ("Entergy Answer") (May 15, 2015) (ML15135A498).

the contrary, it is Entergy's LAR that, if granted, would conflict with applicable NRC regulations. Second, all four of the State's contentions fall well within the scope of this LAR because Entergy has directly connected this LAR with other matters. Entergy claims that other matters—such as its January 6, 2015 exemption request[3]—are "separate and unrelated."[4] This is incorrect: the exemption request assumes, depends upon, specifically cites to—and asks to be exempted from—regulations that Entergy concedes are applicable only if this LAR is granted.[5] In these circumstances, to review each matter separately would deprive the State of its statutory hearing rights under the Atomic Entergy Act ("AEA").[6] Separate review would also violate the National Environmental Policy Act ("NEPA").[7]

I. In Contentions One and Two, the State is challenging the application of NRC regulations in this particular instance, not the underlying regulations themselves.

Entergy and Staff ask this Board to treat Entergy's LAR as though it has been already pre-approved by a generic regulation from 2002. That cannot be so.

Entergy and Staff claim that the State's Contentions One and Two are "impermissible attacks on Commission regulations"—regulations that, in their view, pre-approved this LAR.[8] To be clear, although Entergy and Staff frame their answers as responses to the State's specific contentions, their underlying argument is that this LAR has been pre-approved. According to

[3] *See* Letter from Christopher Wamser, Entergy Site Vice President, to NRC Document Control Desk (Jan. 6, 2015) (BVY 15-002) (ML15013A171).

[4] Entergy Answer at 21.

[5] Petition at 24-26.

[6] *Id.*, at 20-26.

[7] *Id.*, at 26-31.

[8] Entergy Answer at 15.

Staff, 10 C.F.R. §§ 50.75(h)(4)-(5) "explicitly permit the modification requested in Entergy's LAR."[9] If this Board accepts that argument, then *no one* can ever challenge this LAR.

The notion that a rule could pre-approve a LAR filed 14 years later is problematic for a number of reasons. First, the idea that a LAR is pre-approved and unchallengeable cannot be reconciled with Congress's direction in the Atomic Energy Act that parties with standing have hearing rights in "any proceeding" on the "amending of any license." 42 U.S.C.A. § 2239(a)(1)(A). Entergy and Staff concede, as they must, that the State has standing in this proceeding. Entergy and Staff do not cite a single precedent for a regulation pre-approving a LAR such that entities with standing are precluded from raising any challenges to the LAR.

Second, Entergy and Staff's pre-approval theory goes against fundamental precepts of administrative law, which distinguishes between generic rulemaking and individual licensing proceedings and grants clear hearing rights to those directly affected by the latter. *See generally* 5 U.S.C.A. § 554 (imposing notice, due process, and other requirements on individual licensing proceedings and other adjudications beyond the requirements of generic rulemaking). Although it is common for generic rulemaking to limit the issues that can be raised in a specific licensing matter, that is very different from a generic rulemaking pre-approving a LAR in its entirety. Interested parties must have an ability to participate and raise site-specific issues such as the issues that the State has raised here. In fact, the State's challenge here demonstrates precisely why a specific LAR is required in this situation: while the NRC might generally allow elimination of 30-day notice requirements at other plants, it should not be allowed when a plant is on the record stating an intention to make improper withdrawals from the decommissioning trust fund, as is the case here.

[9] NRC Answer at 24.

Third, the pre-approval theory ignores the fact that at the time the rule was finalized, neither the State nor any other interested parties could have known that Entergy would in fact seek to amend its license in the way it now seeks to do. Thus, the State would likely not have had standing at that time to litigate the validity of a regulation that might never apply to the one plant that falls within its borders. *See generally Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (standing requires an "'actual' or 'imminent'" injury, not an injury that is "'conjectural' or 'hypothetical'"). It cannot be that Entergy's LAR has been pre-approved by a generic rulemaking that occurred 12 years ago, that by its terms was not applicable to Vermont Yankee at the time, and that thus likely could not have been challenged by the State at that time.

To the contrary, the regulation envisions that any LAR would go through the normal process, which includes the opportunity for intervention by interested parties such as the State, and the opportunity for this Board to deny the LAR in situations like this. Rather than dictating that any LAR be automatically granted as pre-approved, the regulation requires only that *if* a LAR is going to be granted, it must "be in accordance with the provisions of paragraph (h) of this section."[10] This is not pre-approval; it is a restriction on what is *eligible* for approval.[11]

The State's position in this matter is thus perfectly consistent with—and not a challenge to—NRC regulations. The State's position is simply that the application of NRC regulations in this particular instance requires denial, not approval, of the LAR.

Entergy is incorrect in its claim that Contentions One and Two improperly challenge NRC regulations. The State's Contention One cites numerous factual and legal arguments for denying Entergy's LAR for failing to demonstrate compliance with 10 C.F.R. §§ 50.75(h)(1)(iv)

[10] 10 C.F.R. § 50.75(h)(5).

[11] And as explained *infra* Part II, Entergy's LAR—when viewed in conjunction with its directly related exemption request—in fact fails this eligibility test and is thus barred by 10 C.F.R. § 50.75(h)(5).

and 50.82(a)(8)(i)(B) and (C), and for failing to demonstrate reasonable assurance of adequate protection of public health and safety.[12] Entergy's main argument for compliance with 10 C.F.R. §§ 50.75(h)(1)(iv) is its pre-approval theory, which is incorrect for the reasons explained above. As for the State's detailed arguments on the failure to demonstrate compliance with 10 C.F.R. § 50.82(a)(8)(i)(B) and (C), Entergy's only response is its claim that "future satisfaction" of these provisions is "not within the narrow scope of the LAR."[13] This is incorrect.

It is undisputed that Entergy's LAR has two real-world impacts on Entergy's activities: (1) it eliminates the 30-day notice requirement for withdrawals from the decommissioning trust fund for decommissioning activities; and (2) by moving the 30-day notice requirement out of the license and into the regulation, it allows Entergy to seek an exemption from that regulation to eliminate the 30-day notice requirement for withdrawals for spent fuel management expenses. Although Entergy and Staff ask this Board to ignore the second point, it cannot be ignored because Entergy has already filed for that exact exemption. The fact is that if the Board denies the LAR, Entergy must continue to give 30-day notices of withdrawals for all activities. If the Board allows the LAR to be granted, then—far from simply imposing "less restrictive" notice requirements, as Staff claims[14]—Entergy will not have to give *any* advance notice for withdrawals for what it unilaterally determines (correctly or incorrectly) to be decommissioning expenses or (if the exemption is granted) spent fuel management expenses.

While Entergy and Staff claim that there is no decrease in safety if Entergy is free to make withdrawals from decommissioning trust funds without any advanced notice, that is a question that goes to the merits, not to whether the State should be granted a hearing on its

[12] Petition at 3-17.

[13] Entergy Answer at 19.

[14] Staff Answer at 27.

contention. The State has put forward credible evidence, including signed declarations, stating that Entergy's planned uses of the decommissioning trust fund create a significant danger that the fund will ultimately have a shortfall.[15] While Entergy claims that the State "identifies no evidentiary support" for what Entergy characterizes as "gross speculation suggesting Entergy would elect to engage in unlawful conduct,"[16] the State's evidence in fact shows that Entergy is on record—both in its PSDAR filing and in statements to the media—that it intends to use the nuclear decommissioning trust fund in ways that the State believes to be unlawful.[17] The State has in fact identified several specific examples of improper withdrawals that Entergy has stated it intends to make, such as for insurance payments or shipments of non-radiological asbestos waste.[18]

Entergy's LAR cannot be separated from the context in which it is made—at a time when Entergy is on record as intending to make what the State believes to be improper withdrawals from its nuclear decommissioning trust fund. Entergy argues that "[t]he NRC . . . regulates the N[uclear] D[ecommissioning] T[rust Fund],"[19] but then seeks through this LAR to eliminate the NRC's ability to determine on a timely basis whether Entergy is making appropriate withdrawals. Because the 30-day notice provision allows NRC and others to monitor the decommissioning trust fund and object to improper withdrawals before they occur, and because Entergy has made clear that it intends to make improper withdrawals, granting this LAR places the public and the environment at risk that Entergy will not have the funds to fully decommission

[15] Petition at 3-17.

[16] Entergy Answer at 22.

[17] *See, e.g.*, Petition at 9-11.

[18] *Id.*

[19] Entergy Answer at 23.

and decontaminate Vermont Yankee. The LAR thus violates 10 C.F.R. 50.82(a)(8)(i)(B) and (C), and fails to demonstrate reasonable assurance of adequate protection of public health and safety.[20]

As for the State's Contention Two, again Entergy overreaches when it claims that the State is impermissibly challenging NRC regulations. Entergy cites the general requirement that "[w]henever a holder of a license" seeks to amend its license, the LAR "must be filed with the Commission,"[21] and claims that the State's timeliness argument violates the "whenever" part of this regulation.[22] First, the "whenever" language in 50.90 means nothing more than "if"—there is no indication that the NRC intended it as a blanket elimination of all timeliness requirements. Indeed, if Entergy were correct, then no one could ever challenge the timeliness of a LAR. Second, the State has identified specific ways in which Entergy has gained an unfair advantage and the State has been disadvantaged by Entergy's reliance on the license provision restrictions for the last 12 years and Entergy's attempt to now abandon its license commitments. The State's reliance on Entergy's acceptance of the licensing condition was one of the quid pro quo's for approval of Entergy's purchase of the Vermont Yankee plant. Thus, even if Entergy's expansive reading of the single word "whenever" were correct in general, it would not be correct in a case where a licensee's delay has prejudiced the public and the host State.

[20] NEC Staff suggests that "[t]o the extent Vermont believes that Entergy is not in compliance with NRC regulations, the proper recourse would be to file a § 2.206 petition requesting an enforcement action." Staff Answer at 36. The ability to file a separate petition for enforcement cannot detract from the State's hearing rights in this proceeding. Further, Staff's suggestion ignores the reality that neither the NRC nor the State could effectively enforce against Entergy's use of the decommissioning trust fund if the notification requirement were eliminated.

[21] 10 C.F.R. § 50.90.

[22] Entergy Answer at 27.

II. The State's contentions fall well within the scope of this LAR because Entergy has directly connected this LAR with other matters.

Although the NRC has held that, in general, an intervenor has no right to a hearing to challenge an exemption request, it has created a clear exception to this rule. NRC has held that when an exemption request is "directly related" to a licensing amendment action, and an intervenor raises an admissible contention related to the exemption, that contention should be subject to a hearing.[23] In *PFS*, the NRC granted a hearing on an exemption request that was made during the pendency of a licensing proceeding for a proposed Independent Spent Fuel Storage Installation ("ISFSI"). "Where the exemption is . . . a direct part of an initial licensing or licensing amendment action, there is a potential that an interested party could raise an admissible contention on the exemption, triggering the right to a hearing under that AEA.[24]

That is precisely the case here. Entergy asserts that its January 6, 2015 exemption request is "separate and unrelated."[25] This is incorrect: the exemption request assumes, depends upon, specifically cites to—and asks to be exempted from—regulations that Entergy concedes are applicable only if this LAR is granted.[26] Entergy cannot contest that the exemption request is dependent on the LAR. As the State noted in its Petition, the first page of the exemption request presumes the LAR will be granted and then notes that the request includes "an exemption *from 10 CFR 50.75(h)(1)(iv)* for the same reasons, and also to allow trust fund disbursements for irradiated fuel management activities to be made without prior notice" (emphasis added).

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[23] *In the Matter of Private Fuel Storage, LLC* ("*PFS*"),CLI-01-12, 53 NRC 459, 476; *see also, e.g., In the Matter of Honeywell International, Inc.*, CLI-13-1, 77 NRC 1, 7 ("But when a licensee requests an exemption in a related license amendment application, we consider the hearing rights of the amendment application to encompass the exemption request as well.").

[24] *PFS* at 470 (emphasis added).

[25] Entergy Answer at 21.

[26] Petition at 24-26.

It is thus undisputed that the exemption request depends upon the LAR. According to Entergy, this is irrelevant because the LAR does not mention the exemption request. But that is precisely the problem. The LAR purports to be substituting *all* of 50.75(h) for the current provisions in the Vermont Yankee license. In truth, the LAR is directly connected to an effort by Entergy to substitute only *part* of 50.75(h) for the current license provisions. An analogy would be if the New England Patriots offered to trade Tom Brady to another team without mentioning that Tom Brady is going to be suspended for the first four games of the season. It is the same here—to evaluate the merits of Entergy's proposed trade (substituting 50.75(h) for its current licensing provisions), the Board must consider the fact that Entergy is simultaneously seeking to be exempted from portions of 50.75(h). In particular, the actual regulatory regime Entergy seeks—through the LAR combined with the exemption request—is the elimination of the 30-day notice requirement for all withdrawals for purported decommissioning *and spent fuel management* expenses. Entergy and Staff can point to nothing from the 2002 rule that authorizes this. Entergy is simply incorrect in its claim that it "is consistent with . . . 10 C.F.R. § 50.75(h)(1)(iv) to allow trust fund disbursements for irradiated fuel management activities to be made without prior notice."[27] Notably, Entergy has no citation—other than to its own arguments in its exemption request—for this claim. And Staff correctly recognizes that the Commission's generic determination in 2002 went only to withdrawals for decommissioning expenses, which "do not include irradiated fuel management."[28]

This is fatal to Entergy's LAR. It is undisputed that under 10 C.F.R. § 50.75(h)(5), any LAR such as the one at issue here "shall be in accordance with the provisions of paragraph (h) of

[27] Entergy Answer at 9.

[28] NRC Answer at 29.

this section."[29] It is further undisputed that Entergy's LAR, when combined with its pending exemption request, seeks to eliminate the 30-day notice requirement for spent fuel management expenses. That is *inconsistent* with 50.75(h). Because the LAR is not "in accordance with the provisions of paragraph (h) of this section," it must be denied.[30] Although Entergy and Staff accuse the State of challenging NRC regulations, it is Entergy's LAR and its segmented approach that cannot be squared with applicable NRC regulations.

A hearing right clearly exists where a licensing action is predicated on an exemption request: "[b]ecause resolution of the exemption request directly affects the licensability of the proposed ISFSI, the exemption raises material questions directly connected to an agency licensing action, and thus comes within the hearing rights of interested parties."[31] Here, the matters are clearly connected and dependent on each other.

A proper examination of the LAR's potential impact on public health and safety cannot be made independent of the exemption request—a point repeatedly stressed in the State's Petition. The two must be reviewed together. The use of an exemption "cannot remove a matter germane to a licensing proceeding from consideration in a hearing, assuming an interested party raises an admissible contention thereon. To hold otherwise would exclude critical safety questions from licensing hearings merely on the basis of an 'exemption' label."[32]

Entergy and Staff seek to remove the exemption request from consideration here by attempting to distinguish the present circumstances from those present in *PFS*. Those distinctions fail. First, Entergy raises *Zion*, arguing that exemption requests which involve

[29] 10 C.F.R. § 50.75(h)(5).

[30] *Id.*

[31] *PFS* at 467.

[32] *Id.*

"already-licensed facility[ies] asking for relief from performing a duty imposed by NRC regulations . . . ordinarily do not trigger hearing rights." This reliance on *Zion* is misplaced. The *Zion* exemption request did not trigger a hearing right because it was a stand-alone exemption request with no companion LAR under review. Additionally, the type of activity an exemption seeks to affect does not impact the core *PFS* hearing right analysis. Whether the Board and the Commission characterize the exemption request as a decommissioning-related activity, or something else entirely, has no bearing on the State's recognized right to a hearing when an LAR is directly related to an exemption request.

Second, Entergy claims that this is unlike *PFS* because here "[t]he State is attempting to *insert* the exemption request *into* a distinct LAR proceeding," when, according to Entergy, "[t]he LAR stands alone."[33] Not so. The nature of this particular LAR is that, rather than purely eliminating specific provisions of its license, Entergy's LAR seeks to substitute 50.75(h) for those provisions. As explained above, in this situation, it is absolutely relevant *what* Entergy is substituting for the current provisions and the fact that Entergy is on record in its exemption request seeking to hamper the way in which 50.75(h) applies to it. Entergy cannot escape this reality simply because its LAR puts forth all of 50.75(h) as the substitute, when Entergy's pending exemption request, if granted, makes clear that all of 50.75(h) would not actually apply.

Further, as laid out in the State's Petition, and made all the clearer in Entergy and Staff's opposition, evaluating the safety impacts of the LAR becomes all the more difficult if the Board is deprived of the necessary opportunity to examine the directly related exemption request. Examination of the LAR in isolation prohibits the Board from engaging in the necessary inquiry of whether the underlying requested exemptions increase the risk to public health and safety, as expressed and enabled by the LAR.

[33] Entergy Answer at 34.

While Entergy and Staff claim throughout their answers that neither the PSDAR nor the January 6, 2015 exemption request has anything to do with this LAR, those arguments mischaracterize the State's Petition. The State is not asking the Board to evaluate the entirety of the PSDAR or the exemption request to determine whether this LAR should be granted. Rather, the State's position is simply that the merits of the LAR cannot be isolated from the context in which it is sought. Entergy claims that "the LAR does not relate to . . . the *purposes* for which [decommissioning trust] funds may be used"[34] and that LAR is not "seeking any particular authority regarding *use* of [decommissioning trust] funds."[35] But that does not mean that Entergy's intended uses are irrelevant to whether the public and the environment are protected by the granting of this LAR eliminating the 30-day notice requirement for withdrawals. The intended uses are directly relevant, as they go to the need for greater, not less, oversight of the Vermont Yankee decommissioning trust fund. Whatever might be acceptable on a generic level is not acceptable as applied to a company that is on record intending to make withdrawals that the State has explained are not allowed.

Although Entergy tries to escape this conclusion by claiming that the "LAR has no bearing, whatsoever, on the *types* of disbursements that can be made,"[36] that is incorrect. As the State explained in its Petition, the NRC imposed the 30-day notice requirement on Entergy at the time it purchased Vermont Yankee, and the NRC did so as part of its safety evaluation to ensure proper uses of the decommissioning trust fund. The 30-day notice requirement was directly paired with an ability of the NRC to object to improper withdrawals and thus protect the fund from ever having a shortfall that prevents full decommissioning—and thus endangers public

[34] *Id.* at 10.

[35] *Id.* at 37.

[36] Entergy Answer at 24.

health and the environment. The NRC cannot eliminate such a requirement at a time when the State has put forward credible evidence that the requirement is necessary to protect public health and the environment.

Finally, Staff seems to argue that the State is wrong on the merits of its claim regarding whether Entergy can use the decommissioning trust fund in the ways Entergy has stated it intends to use that fund.[37] First, while Entergy and Staff both challenge the merits of the State's expert opinions in their answers, such arguments at this stage of the proceeding are premature and have no place for consideration here. The Board has made clear that its determination of whether a contention is adequately supported by expert opinion,

> does not call upon the intervenor to make its case at [the contention admissibility] stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention. A petitioner does not have to provide an exhaustive list of its experts or evidence or prove the merits of its contention at the admissibility stage. As with a summary disposition motion, the support for a contention may be viewed in a light that is favorable to the petitioner and inferences that can be drawn from evidence may be construed in favor of the petitioner.[38]

The State's expert opinions thus must be given maximum weight relative to the answers in opposition at this stage of the proceeding.

Second, Staff's cursory analysis of the State's arguments is telling in its lack of citations for the assertions made by legal counsel for Staff. In particular, Staff claims that "Entergy has shown that there is sufficient money in the decommissioning trust fund to cover decommissioning expenses; that the events that Vermont cites are not the unforeseen conditions that 10 C.F.R. § 50.82(a)(8)(i)(B) addresses and that these events are, moreover, speculative; and

[37] Staff Answer at 43-44.

[38] *In the Matter of Energy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* ASLB Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption at 14(Sept. 22, 2006)(LBP-06-20)(ML062650337)(internal citations omitted).

that the claim that the PSDAR cost estimate is incorrect is speculative."[39] In a filing that contains over 260 footnotes, that particular sentence is without citation. And for good reason: it is nothing more than a conclusory statement by counsel for Staff. Similarly, to the extent Staff cites anything to support its conclusory statements in this section, it is not to expert analyses. Rather, Staff primarily reiterates what "*Entergy* stated" is various filings, including "*Entergy's* cash flow analysis."[40] Ironically, Staff relies most heavily on Entergy's statements in the very same exemption request that Staff asks this Board to ignore.[41]

To the extent Staff cites anything other than Entergy's statements and assertions, it ignores the nature of this particular proceeding and the facts on the ground at Vermont Yankee. In particular, Staff notes that other similar exemption requests "have been approved for other facilities undergoing decommissioning,"[42] without mentioning that no one challenged those other requests or raised issues like the issues the State has raised here. Staff also cites regulatory guidance about how, in general, SAFSTOR "allows natural radioactive decay to proceed over time, which will reduce the amount of contamination and radioactivity that will have to be addressed in decommissioning and thus reduce the overall expense of decommissioning."[43] Yet Entergy's PSDAR and Decommissioning Cost Estimate explicitly note that this will not be the case at Vermont Yankee: "No process system containing/handling radioactive substances at shutdown is presumed to meet material release criteria by decay alone (i.e., systems radioactive at shutdown [will] still be radioactive over the time period during which the decommissioning is

[39] Staff Answer at 43.

[40] *Id.* (emphasis added).

[41] *Id.* (citing the exemption request repeatedly).

[42] *Id.*

[43] *Id.* at 44.

accomplished, due to the presence of long-lived radionuclides)."[44] In fact, as the State noted in its comments on the PSDAR, a Site Assessment Study that Entergy conducted last fall "shows that there appears to be no reduction in waste volume based on decay during SAFSTOR."[45]

And Staff is incorrect in claiming that the State's position here is somehow contrary to the its Settlement Agreement with Entergy since the Settlement Agreement "specifically contemplates" the use of the decommissioning trust funds for spent fuel management.[46] While it is true that the Settlement Agreement includes protections for the State to prevent Entergy from a double recovery of funds *in the event that* Entergy succeeds in getting its exemption request approved, the State went to great pains in the Settlement Agreement to make clear that it was by no means conceding that Entergy could obtain such an exemption. Staff's selective citation from paragraph 11 of the Settlement Agreement ignores the lead-in language about how "the Parties reserve all rights regarding further proceedings related to the VY Station, including without limitation its decommissioning *and the proper use of the NDT and to seek or contest expenditures from that fund* with the NRC and in any other appropriate forum."[47] Staff also ignores paragraph 18 of the Settlement Agreement, which specifically reiterates "the State's reservation of its rights to participate in NRC proceedings *and to dispute Entergy VY's use(s) of the NDT*."[48] Staff's assertions here are without merit.

The State, by contrast, has raised numerous detailed concerns, supported by expert declarations in this proceeding, about the very real possibility of a shortfall if NRC allows

[44] Vermont Yankee Nuclear Power Station Post-Shutdown Decommissioning Activities Report, Attachment 1: Entergy's VYNPS Decommissioning Cost Estimate § 5, page 2 (Dec. 19, 2014) (ML14357A110).

[45] Comments of the State of Vermont at 61 (Mar. 6, 2015) (ML15111A085).

[46] Staff Answer at 44 n.198.

[47] Settlement Agreement ¶ 11 (emphasis added).

[48] *Id.* at ¶ 18 (emphasis added).

Entergy's planned uses of the decommissioning trust fund, and no one at NRC has evaluated the merits of those claims. Those claims directly impact whether it is safe and environmentally sound to eliminate the 30-day notice requirement as Entergy seeks to do here.

Although Staff claims that the State's arguments about the true costs of decommissioning are "speculative," Staff ignores the fact that Entergy's analysis is speculative as well—and poor speculation at that, since, for instance, it ignores the presence of strontium-90 that was discovered *after* Entergy submitted its PSDAR. Staff had this to say about the post-PSDAR discovery of strontium-90 at Vermont Yankee:

> Whether and to what extent any current data regarding strontium-90 contamination will affect the radiation-release criteria which will be calculated decades from now and whether and to what extent that calculation will affect the cost of site remediation and thus the ultimate cost of decommissioning cannot be determined at this point.[49]

That is precisely the point. When no one knows how much it will cost to decommission Vermont Yankee, and when the State has put forward expert declarations noting significant costs that are currently unaccounted for, it is arbitrary and an abuse of discretion for NRC to take affirmative actions that *decrease* the current oversight and the current limitations on use of the nuclear decommissioning trust fund. At the very least, the State deserves a hearing on the merits before the NRC takes such actions.

III. NEPA applies here and requires further environmental review.

The State's Contention Four explains why NEPA applies here and why both the NRC and Entergy have thus far failed to undergo the required environmental review associated with this LAR. In response to this argument, Entergy claims that the State is jumping the gun on this issue

[49] Staff Answer at 47.

because "the Staff's environmental review has not been completed."[50] Staff, by contrast, appears to believe that all of the necessary environmental review has been completed.[51] Given that Entergy and Staff cannot agree on whether further environmental review is forthcoming, it would at the very least be premature for the Board to dismiss the State's Contention Four before anyone knows whether further environmental review will occur.

Further, both Entergy and Staff focus their arguments for denying Contention Four on the claim that this LAR is categorically excluded from environmental review under 10 C.F.R. § 51.22(c)(10)(ii). According to Entergy, its LAR is nothing more than a "change[] to certain reporting requirements or other administrative procedures."[52] Entergy's argument proves too much. By this theory, if Entergy filed a LAR seeking to eliminate all reporting requirements for radiological releases, that LAR would apparently also fall under a categorical exclusion from NEPA. That cannot be so.

As explained in the State's Petition and above, Entergy's overly simplistic view of its LAR is incorrect. Elimination of the 30-day notice requirement directly impairs the ability of the NRC, the State, and others to object to and prevent improper trust fund withdrawals. NEPA requires at least some level of environmental review before such actions can be taken. Indeed, Staff recognizes that the 2002 rule "was preceded by publication of an environmental assessment (EA) and finding of no significant impact (FONSI) concerning the proposed action,"[53] but Staff fails to explain why not even that level of review would be needed for the action proposed here.

[50] Entergy Answer at 40.

[51] *See* Staff Answer at 48-56.

[52] Entergy Answer at 41.

[53] Staff Answer at 14.

CONCLUSION

For these reasons and those stated in the State's Petition, the State respectfully requests that this Board accept the State's Petition and reject Entergy's License Amendment Request.

Respectfully submitted,

/Signed (electronically) by/
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Dated at Montpelier, Vermont
this 22nd day of May, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR VERMONT	)	Docket 50-271-LA-3
YANKEE, LLC AND ENTERGY	)	
NUCLEAR OPERATIONS, INC.	)	May 22, 2015
	)	
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the forgoing the State of Vermont's Reply to NRC Staff and Entergy Answers to Petition for Leave to Intervene, and Hearing Request dated May 22, 2015, have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding, this 22nd day of May, 2015.

/Signed (electronically) by/
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Dated at Montpelier, Vermont
this 22nd day of May, 2015