

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Entergy Nuclear Vermont Yankee

Docket Number: 50-271-LA-3

ASLBP Number: 15-940-03-LA-BD01

Location: teleconference

Date: Tuesday, July 7, 2015

Work Order No.: NRC-1705

Pages 1-78

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: :

ENTERGY NUCLEAR : Docket No.

VERMONT YANKEE, LLC & : 50-271-LA-3

ENTERGY NUCLEAR : ASLBP No.

OPERATIONS, INC. : 15-940-03-LA-BD01

(Entergy Nuclear :  
Vermont Yankee LLC) :

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Tuesday, July 7, 2015

Teleconference

BEFORE:

WILLIAM J. FROEHLICH, Chair

DR. MICHAEL F. KENNEDY, Administrative Judge

DR. RICHARD E. WARDWELL, Administrative Judge

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## P R O C E E D I N G S

2:01 p.m.

ADMIN. JUDGE FROEHLICH: Good afternoon. My name is William Froehlich and I'm the Licencee Board Chairman in this case which is entitled Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Incorporated. Docket Number 50-271-LA-3.

This proceeding involves a license amendment request filed by Entergy on September 4th, 2014 and a Hearing Request filed by the State of Vermont on April 20th, 2015, in response to an opportunity for hearing published in the Federal Register on February 17th, 2015.

By order of the Chief Judge issued May 1st this Board was established to decide whether there is an admissible contention and whether a hearing should be held in this matter.

I'm in the NRC Headquarters Building in Rockville, Maryland, and I'm joined by my fellow Board Members, Dr. Michael Kennedy, Nuclear Engineer and Dr. Richard Wardwell, a Civil Engineer with a focus on Environmental Geoscience. Also with us is the Board's Law Clerk, Ms. Nicole Pepperl.

Would counsels for the parties please introduce themselves for the record at this point.

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1 Let's start please with the State of Vermont.

2 MR. LANDIS-MARINELLO: Good afternoon, my  
3 name is Kyle Landis-Marinello. I'm an Assistant  
4 Attorney General for the State of Vermont.

5 ADMIN. JUDGE FROEHLICH: Thank you, Mr.  
6 Landis-Marinello.

7 For Entergy Nuclear?

8 MR. BURDICK: Good afternoon, Judge  
9 Froehlich and Members of the Board and the other  
10 participants. This is Stephen Burdick of Morgan,  
11 Lewis & Bockius. I'm appearing today on behalf of the  
12 Applicant, Entergy. With me is Paul Bessette who is  
13 one of my partners from Morgan Lewis and also Susan  
14 Raimo, who is Senior Counsel for Entergy. We are also  
15 joined in person or by telephone by various Entergy  
16 personnel including representatives from the Vermont  
17 Yankee organization should we require their assistance  
18 to respond to the Board's questions.

19 Thank you.

20 ADMIN. JUDGE FROEHLICH: Thank you, Mr.  
21 Burdick.

22 And for the NRC staff?

23 MS. GHOSH: Good afternoon, Your Honor.  
24 This is Anita Ghosh with the NRC staff. I'm  
25 accompanied by co-counsels Beth Mizuno, Jeremy

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1 Wachutka and Mitzi Young. I also have with me in the  
2 room several members of the NRC staff.

3 ADMIN. JUDGE FROEHLICH: Thank you, Ms.  
4 Ghosh.

5 As stated in the Board's order of June  
6 17th, we're conducting a telephonic oral argument on  
7 whether the State of Vermont's April 20th Petition for  
8 Leave to Intervene and Hearing Request should be  
9 granted. In the Board's June 17th, 2015, Order we  
10 provided a list of four topics that we asked the  
11 parties to be prepared to address. These topics were  
12 not exclusive but they were topics which were of  
13 particular interest to the various Board Members.

14 On the same day that our order scheduling  
15 this oral argument issued, the Commission staff  
16 granted a January 6, 2015, request from Entergy  
17 Nuclear for certain exemptions from specific  
18 requirements of Title 10 of CFR. And yesterday the  
19 State of Vermont filed a motion for leave to file to  
20 file a new fifth contention in this matter.

21 As we stated in our notice, the oral  
22 argument will proceed as follows. First the Board  
23 will hear short opening statements limited to five  
24 minutes each from the State of Vermont, Entergy and  
25 then the NRC staff. The opening statements will be

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1 followed by questions from the Board and the Board's  
2 questions will focus on whether any of Vermont's  
3 proffered contentions are admissible and the impact,  
4 if any, of the Commission staff's grant of Entergy's  
5 January 6, 2015, request for an exemption from certain  
6 NRC regulations.

7 The Board will direct its questions to  
8 counsel for the particular party, but if someone feels  
9 a need to comment on a question and they haven't been  
10 physically asked to answer, let us know at the  
11 earliest convenient time or appropriate moment and  
12 we'll hear from you as well. As time permits, we'll  
13 also hear short closing statements by counsel at the  
14 end of the arguments.

15 For the benefit of the Court Reporter and  
16 for the record in this case, please identify yourself  
17 before speaking. And at this point I'd ask my fellow  
18 Board Members, Judge Kennedy, if there are any  
19 comments or --

20 ADMIN. JUDGE KENNEDY: This is Judge  
21 Kennedy. I have no opening comments.

22 ADMIN. JUDGE FROEHLICH: And Judge  
23 Wardwell?

24 ADMIN. JUDGE WARDWELL: I have none.

25 ADMIN. JUDGE FROEHLICH: Are there any

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1 matters of concern to the parties before we hear the  
2 opening statement from the State of Vermont?

3 MR. LANDIS-MARINELLO: This is Kyle Landis-  
4 Marinello. I just for the complete of the record I  
5 want to mention I have in the room here Scott Kline,  
6 the Division Chief for the Environmental Protection  
7 Division and Assistant Attorney General Justin Colbert  
8 and we also have participants from the Department of  
9 Public Service listening in as well.

10 ADMIN. JUDGE FROEHLICH: Thank you, sir.

11 If there are no other concerns or  
12 procedural matters from any of the parties you may  
13 begin, Mr. Landis-Marinello with your opening  
14 statement.

15 MR. LANDIS-MARINELLO: Thank you.

16 In my opening statement I want to make two  
17 main points. First, the Board should deny Entergy's  
18 request to amend its license because the amendment is  
19 based on the 2002 rule which only allows a one-for-one  
20 slot of regulatory conditions for license condition  
21 and that's not what Entergy is seeking.

22 When Entergy bought Vermont Yankee in  
23 early 2002 the NRC knew that it needed to impose  
24 limitations on trust fund disbursements. This was  
25 necessary to insure the funds could pay for wholly

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1 decontaminating the site. At that time, the NRC  
2 determined as part of its hasty evaluation that it was  
3 necessary for Entergy to give 30 days notice before  
4 any disbursement of trust funds. That is Entergy's  
5 current license condition.

6 A few months later, NRC staff passed the  
7 generic rule with a more relaxed standard. Under the  
8 generic 2002 rule, 30 days notice is no longer  
9 required for decommissioning expenses but is required  
10 for expenses like spent fuel management.

11 A year later, NRC staff said that certain  
12 licensees could keep their current license conditions  
13 or they could replace them one-for-one with the 2002  
14 rule. To make certain that it was a one-for-one  
15 exchange, staff passed 50.75(h) (5) which requires that  
16 all amendments shall comply with the rule.

17 Entergy's license amendment claims to be  
18 a one-for-one exchange, not so. As the State's recent  
19 filings made clear, Entergy has now been given an  
20 exemption from the two most important provisions of  
21 the 2002 rule. One, the requirement that  
22 decommissioning funds be used only for decommissioning  
23 expenses and, two, the requirement of giving 30 days  
24 notice for expenses like spent fuel management. This  
25 is not at all what was envisioned, analyzed and

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1 approved in the 2002 rule.

2 The language in 50.75(h) (5) could not be  
3 clearer that this Board can only approve license  
4 amendments that are in accordance with the 2002 rule.  
5 This license amendment is not.

6 Entergy and staff's only response to this  
7 argument is to point out that the LAR is not mentioned  
8 in the exemption request. Of course, nothing  
9 prevented Entergy for mentioning the exemption request  
10 in their LAR. Toe the contrary as the statement made  
11 clear in yesterday's filing with the Board, Entergy  
12 has a legal duty under 10 CFR 50.9 and 50.90 to submit  
13 a complete and accurate application.

14 Entergy could have said directly in its  
15 LAR what it was planning to do ad the State then would  
16 have had a right to a hearing on whether Entergy's  
17 proposal would adequately protect public health,  
18 safety and the environment. But Entergy did not do  
19 that. Instead, Entergy chose to submit an application  
20 that is missing critical information. Their LAR  
21 asserts that they will be bound by all of the  
22 regulations in 50.75(h) and even includes a chart that  
23 quotes those regulations and applicable. Entergy  
24 portrays the amendment as a one-for-one trade. But  
25 the exemptions make this far less than a one-for-one

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1 trade. Entergy cannot assert as the 2002 rule  
2 requires that it is going to be subject to all of the  
3 requirements of 50.75(h) when it has been exempted  
4 from the most important parts of that regulation.

5 Entergy and staff asked this Board to turn  
6 a blind eye to the exemption in evaluating the LAR.  
7 They asked the Board to evaluate the incomplete and  
8 inaccurate LAR and presumably to entirely ignore the  
9 fact that Entergy's exemption request has not been  
10 granted. It would set a dangerous precedent for the  
11 Board to allow such a siloed approach. It would also  
12 violate the Atomic Energy Act and the Administrative  
13 Procedures Act that denies hearing rights to the state  
14 in this way.

15 Second, Entergy license amendment should  
16 be denied because there has been no environmental  
17 analysis to date. The National Environmental Policy  
18 Act requires review here. The parties cannot agree on  
19 whether an environmental analysis will occur. Entergy  
20 says it will but staff says it will not. Regardless  
21 the LAR doe snot comply with NEPA because the hard  
22 look must happen before a decision is made on the  
23 license amendment.

24 Entergy and staff seems to be of the  
25 opinion that they can take Federal actions and then

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1 analyze the environment impacts later. The U.S.  
2 Supreme Court and the D.C. Circuit have made clear  
3 that NEPA requires environmental review before action  
4 is taken. The NRC must do so here. It has not.

5 Thank you and I look forward to answering  
6 your questions.

7 ADMIN. JUDGE FROEHLICH: Thank you, sir.

8 I'd like to hear now the opening statement  
9 from Entergy. Will that be you, Mr. Burdick?

10 MR. BURDICK: It will. Thank you, Your  
11 Honor.

12 This is Stephen Burdick, Counsel for  
13 Entergy.

14 Entergy appreciates this opportunity to  
15 address the Board this afternoon and answer any  
16 questions related to the State's Hearing Request that  
17 is the subject of this proceeding.

18 This proceeding relates to Entergy's  
19 September 4, 2014, license amendment request or LAR.  
20 They would delete Vermont Yankee Nuclear  
21 Decommissioning Trust Conditions in place of  
22 compliance with 10 CFR Section 50.75(h) requirements.  
23 Although the State's Hearing Request purports to  
24 challenge Entergy's LAR, it is, in fact, a much  
25 broader unauthorized challenge to Entergy's

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1 decommissioning for Vermont Yankee and its planned use  
2 of decommissioning funds. As a result, the State's  
3 Hearing Request must be rejected. None of the State's  
4 four proposed contentions satisfies the Commission's  
5 contention of admissibility requirements in 10 CFR  
6 Section 2.309(f).

7 Both Entergy and the NRC staff already  
8 provided multiple independent reasons for why four of  
9 the contentions are admissible. Without repeating  
10 those arguments, let me provide a high-level overview  
11 of some of the key failures of the State's Hearing  
12 Request and explain the impact of recent developments.

13 First, Entergy's LAR is anticipated by and  
14 entirely consistent with the NRC's regulations and the  
15 Commissions, Rule-making Statements related to nuclear  
16 decommissioning trust funds. When the NRC issued an  
17 order in May of 2002 approving the transfer of the  
18 Vermont Yankee operating license to Entergy it imposed  
19 certain decommissioning trust requirements which were  
20 subsequently included as part of Condition 3(j) in the  
21 Vermont Yankee license. Those requirements included  
22 reporting obligations related to the use of the trust  
23 funds. This was a standard process at the time.  
24 Later in 2002 and in November 2003 the NRC amended its  
25 regulations to add new provisions at 10 CFR Section

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1 50.75(h) governing decommissioning trusts that were  
2 very similar to those requirements in Condition 3(j)  
3 including reporting obligations.

4 The Commission explicitly stated in that  
5 rule-making that licensees will have the option of  
6 maintaining their existing license conditions or  
7 submitting to the new requirements and will be able to  
8 decide for themselves whether they prefer to keep or  
9 eliminate their specific license conditions.  
10 Additionally, as indicated by the plain language of  
11 the regulation and the rule-making history there is no  
12 time limit by which licensees had to make the  
13 transition. In fact, we are not aware of any time  
14 limit to submit license amendment requests generally.  
15 Entergy submitted the LAR in September 2014 to relive  
16 the Vermont Yankee decommissioning license conditions  
17 in place of compliance with section 50.75(h), nothing  
18 more.

19 Accordingly, Entergy's LAR speaks to only  
20 what was explicitly envisioned and permitted by the  
21 NRC regulations in these past rule-makings. The  
22 State's attempt to prevent the deletion of license  
23 conditions or to impose artificial deadlines for such  
24 actions is an infamous full attack on Commission  
25 regulations contrary to 10 CFR Section 2.335.

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1           Second, the State's contentions raised  
2 numerous issues that are outside the scope of this  
3 narrow proceeding. The scope of this proceeding and  
4 the Board's jurisdiction as defined in the Hearing  
5 Notice is limited to the deletion of portions of  
6 Condition 3(j) on the basis of the provisions of  
7 Section 50.75(h) would apply in their place.

8           Importantly, the scope of this proceeding  
9 does not include and is not required to include  
10 approval of the entire decommissioning project.  
11 Contrary to the scope, nearly all of the State's  
12 arguments are unrelated to the LAR and, therefore,  
13 beyond the narrow scope of these proceedings. These  
14 arguments include challenges related to the  
15 appropriate use of trust funds, the post shutdown  
16 decommissioning activities report, the exemption  
17 request, the Master Trust Agreement, obligations to  
18 the Vermont Public Service Board, Entergy's irradiated  
19 fuel management program and compliance with unrelated  
20 environmental regulations.

21           Third, the State's arguments regarding the  
22 January 6, 2015, exemption request are not moot.  
23 Entergy submitted the exemption request to obtain  
24 exemptions from the NRC regulation to allow use of the  
25 portion of the decommissioning trust fund for the

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1 management of irradiated fuel and in the same manner  
2 as other withdrawals from the fund. All of contention  
3 3 and substantial portions of other contentions  
4 challenge various aspects of the exemption request.

5 The NRC, however, approved the requested  
6 exemptions on June 17 so the exemptions were effective  
7 on June 23rd after publication in the Federal  
8 Register. Accordingly, the Commission has already  
9 determined that the exemptions are authorized by law  
10 will not present an undue risk to the public health  
11 and safety are consistent with the common defense and  
12 security and are separate from the LAR.

13 Now that the NRC has issued the exemptions  
14 the challenges to the exemption request are moot and  
15 cannot support an admissible contentions.

16 Finally, the State's contentions fail to  
17 satisfy other contentions admissibility requirements  
18 as discussed in Entergy's answer opposing the hearing  
19 request.

20 In summary, the State's four contentions  
21 do not satisfy the Commission's contention  
22 admissibility requirements for multiple independent  
23 reasons. Because the hearing request does not include  
24 any admissible contention, it must be rejected in its  
25 entirety.

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1           We appreciate to talk to you and to  
2 respond to your questions and look forward to this  
3 afternoon's discussions.

4           Thank you.

5           ADMIN. JUDGE FROEHLICH: Thank you, Mr.  
6 Burdick.

7           And now I'd like to hear from the  
8 Commission's staff. Is that you, Ms. Ghosh?

9           MS. GHOSH: Yes, thank you, Your Honor.

10          This is Anita Ghosh and I represent the  
11 NRC staff.

12          In 2002 the Commission promulgated the  
13 decommissioning trust provisions rule to requires that  
14 decommissioning trust agreements be in a form  
15 acceptable to the NRC in order to increase assurance  
16 that an adequate amount of decommissioning funds will  
17 be available for their intended purpose.

18          Prior to the issuance of this rule, NRC  
19 regulations did not require that specific terms and  
20 conditions be included in decommissioning trust  
21 agreements. Thus, license conditions delineating  
22 requirements for decommissioning trust agreements were  
23 included in certain licenses on a case-by-case basis  
24 as is the case here for Vermont Yankee.

25          The 2002 rule-making sought to remedy the

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1 situation and a new paragraph 10 CFR Section 50.75 (h)  
2 was added to discuss the terms and conditions that the  
3 NRC believes are necessary to insure that funds in the  
4 trust will be available for their intended purpose. In  
5 statements of consideration for the rule, the  
6 Commission explained that licensees had the option of  
7 maintaining their existing license conditions or  
8 submitting to the new requirements.

9 Entergy's license amendment request is  
10 exclusively contemplated by Section 50.75(h) (5) which  
11 allows licensees to elect to delete license conditions  
12 relating to decommissioning trust agreements so long  
13 as the license amendment is in accordance with Section  
14 50.75(h) .

15 Vermont's petition should be denied  
16 because it inadmissibly challenges the Commission's  
17 regulations at Section 50.75(h) without taking a  
18 waiver. Moreover, each of Vermont's four proposed  
19 contentions are inadmissible under 10 CFR Section  
20 2.309(f) because they are not supported in law or fact  
21 and fail to raise genuine disputes on material issues.

22 Vermont's petitions is also inadmissible  
23 because it challenges a separate exemption request.  
24 Generally, neither the Atomic Energy Act nor the  
25 Commission's Rules of Practice provide third parties

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1 with a right to an adjudicatory hearing on an  
2 exemption request. Additionally, contrary to  
3 Vermont's assertions the Commission's exception to  
4 this rule on PSF does not apply here because the  
5 exemption request is not a require element of the  
6 license amendment request.

7 Here, Entergy's license amendment request  
8 seeks to delete certain license conditions related to  
9 decommissioning trust funds and instead conforms to  
10 the regulations in 50.75(h). As pertinent to this  
11 proceeding, these license conditions require in part  
12 that the NRC be given 30 days written notice of any  
13 intended withdrawals form the decommissioning trust  
14 fund except for administrative expenses. On the other  
15 hand, the regulation at 50.75(h)(1)(iv) requires in  
16 part that the NRC be given 30 working days written  
17 notice of any intended withdrawals from the December  
18 trust fund except for December expenses are  
19 decommissioning has begun or for administrative  
20 expenses. Thus, is the license amendment request is  
21 approved, the licensee would not longer be required to  
22 provide the NRC with prior written notification of  
23 disbursements for decommissioning expenses after  
24 decommissioning has begun.

25 On the other hand, the exemption request

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1 seeks to permit Entergy to make withdrawals from the  
2 decommissioning trust fund for the management of  
3 irradiated fuel and to make these withdrawals without  
4 prior written notification to the NRC. Entergy's  
5 exemption request is separate and independent from the  
6 license amendment request and is not a required  
7 element of the license amendment request. Thus,  
8 Vermont's assertions regarding the exemption request  
9 are beyond the scope of this proceeding.

10 Vermont also asserts that if the  
11 regulation at Section 50.75(h) were applied to Vermont  
12 Yankee instead of the license condition this would  
13 directly impair the NRC's ability to insure compliance  
14 with its regulations and to insure that there is  
15 sufficient funding to safely decommission  
16 admissibility. However, as the Commission  
17 specifically recognized in the statements of  
18 consideration for the 2002 rule, a 30-day notification  
19 provision like the one in the Vermont Yankee license  
20 condition would not add any assurances that funding is  
21 available and would duplicate the notification  
22 requirements of section 50.82 for a licensee that has  
23 begun decommissioning and submitted its post-shutdown  
24 decommissioning activities report.

25 Finally, to the extent that Vermont

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1 asserts that Entergy is not in compliance with the  
2 Commission's decommissioning funding assurance  
3 regulations, the proper course of action for Vermont  
4 is to bring an enforcement action under 10 CFR Section  
5 2.206. For these reasons and as explain in detail in  
6 the staff's brief, Vermont's petition to intervene  
7 should be denied.

8 ADMIN. JUDGE FROEHLICH: Thank you.

9 Let me start off. I'd like pages 3 to 6  
10 of the license amendment request itself and start with  
11 license condition 3(j)(i).

12 Entergy's license amendment request seeks  
13 to delete from the operating license conditions  
14 related to the decommissioning trust fund. Entergy  
15 asserts that the license amendment request if granted  
16 will place Entergy under the requirements of 10 CFR  
17 50.75(h) which deal with decommissioning trust fund.

18 Entergy's LAR compares on pages 3 to 6 of  
19 the license Condition 3(j) to the requirements in 10  
20 CFR 50.75(h).

21 Let me begin with the NRC staff. You made  
22 reference in your opening to the 2010 rule-making  
23 which led to 10 CFR 50.75 and I believe you said that  
24 this was to increase assurance that the  
25 decommissioning funds will be available for their

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1 intended purpose. Did I hear you correctly, staff  
2 counsel?

3 MS. GHOSH: Your Honor, that was the 2002  
4 rule-making. I believe you stated it was the 2010  
5 rule-making.

6 ADMIN. JUDGE FROEHLICH: Okay.

7 MS. GHOSH: It's the 2002 decommissioning  
8 trust provision rule.

9 ADMIN. JUDGE FROEHLICH: Okay. And the  
10 purpose I guess of those rules and the Commission's  
11 regs at 50.75, their purpose was to increase the  
12 assurance that the decommissioning funds would be  
13 available?

14 MS. GHOSH: That's correct.

15 ADMIN. JUDGE FROEHLICH: That's correct.

16 All right.

17 Moving from that, is this the test that  
18 Entergy must meet to receive its license amendment?  
19 Do they have to show to the staff that this change to  
20 operating under the 50.75(h) will increase assurance?

21 MS. GHOSH: The test is that as specified  
22 in Section 50.75(h) (5) says that if the licensee with  
23 existing license conditions related to decommissioning  
24 trust agreements elect to amend those conditions, the  
25 license amendment shall be in accordance with the

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1 provisions of paragraph (h) of this section. So, the  
2 test is essentially to insure that they are in  
3 accordance with paragraph (h) at 50.75. And the  
4 Commission generically found that if they are in  
5 accordance with those regulations, then this would  
6 increase funding assurance.

7 ADMIN. JUDGE FROEHLICH: That it would  
8 increase the funding assurance? All right.

9 Looking at 3(j) (iii), the change requested  
10 here is that the license condition 3(j) (iii) is a 30-  
11 day notice period before any disbursement from the  
12 trust fund and under 50.75(h) (1) (iv), there's only a  
13 30-days notice period before the first disbursement  
14 and thereafter under 50.82(a) (8), no further  
15 notification need be made to the NRC. Is that  
16 correct, that comparison between what's in 3(j) (iii)  
17 and 50.75(h) (i)?

18 MS. GHOSH: That's correct. Essentially,  
19 under the regulation in (h) (1) (iv) after a licensee  
20 has begun decommissioning no further notification  
21 would be necessary.

22 ADMIN. JUDGE FROEHLICH: Okay.

23 MS. GHOSH: For decommissioning expenses.

24 ADMIN. JUDGE FROEHLICH: Okay. And would  
25 the staff have to find that this change increases the

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1 assurance that December trust funds will be available  
2 for their intended purpose? A change like this?

3 MR. WACHUTKA: Your Honor, this is Jeremy  
4 Wachutka from the NRC staff.

5 ADMIN. JUDGE FROEHLICH: Yes.

6 MR. WACHUTKA: Basically the staff's review  
7 of this license amendment crosses a narrow line.  
8 It's basically just to see that the correct license  
9 conditions in the license are deleted and that the  
10 correct regulatory provisions from the regulations are  
11 assumed by the licensee. There's no other subjective  
12 evaluation involved. The Commission itself has  
13 already determined that the regulations themselves are  
14 sufficiently protected of safety so the NRC doesn't  
15 have to redetermine that here. In fact, in the  
16 statements of consideration for the rule-making the  
17 50.75 rule-making, these exact same questions about  
18 the 30-day notice after decommissioning came up and  
19 the Commission addressed those directly and said that  
20 since we have this annual reporting requirement in  
21 decommissioning there is no need for 30-days notice  
22 during the decommissioning period. So, that's why it  
23 is the staff's position that Vermont is challenging  
24 the regulations because all these issues are already  
25 discussed in the rule-making.

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1           And I suppose that Mr. Wachutka that the  
2           correctness, I guess, the correct wording is that the  
3           staff will look to the license amendment and see if  
4           the requested changes conform to the language of the  
5           regulations when it substitutes those regulations for  
6           what's in the license conditions?

7           MR. WACHUTKA: Yes, Your Honor, there could  
8           be two possibilities that a licensee could do under  
9           50.75(h) (5). They could delete the license conditions  
10          and just assume what's in the regulations or they  
11          could also amend their license conditions and so  
12          50.75(h) (5) would say, you know, when you look at  
13          those amended license conditions you're looking to see  
14          if those are consistent with the regulations. But if  
15          the licensees just assume the regulations then that  
16          determination of consistency is self-evident. They  
17          are consistent with the regulations.

18          MR. LANDIS-MARINELLO: And this is Kyle  
19          Landis-Marinello for the State if I could just chime  
20          in on this.

21          ADMIN. JUDGE FROEHLICH: Yes, please.

22          MR. LANDIS-MARINELLO: So, looking at the  
23          actual 2002 rule the basis for it was that "NRC needs  
24          to take a more active oversight role." And that I see  
25          at least four instances in the first pages of that

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1 rule of references to the need that decommissioning  
2 funds will be available for their intended purpose  
3 just as the Board was asking. And I think that's  
4 crucial to keep in mind because it was actually the  
5 2002 rule that made crystal clear that all  
6 decommissioning withdrawals must be for  
7 decommissioning expenses. That's in 50.75(h). And  
8 that's why it's absolutely relevant to this proceeding  
9 that Entergy did not intend to comply with that  
10 provision now that it's been exempted from it. And  
11 Entergy has put forward as the entire basis of this  
12 LAR that the 2002 rule authorized this.

13 In the opening statements Entergy referred  
14 repeatedly to this being explicitly authorized by the  
15 2002 rule and when I look at that rule I don't think  
16 that's an accurate statement.

17 MR. WACHUTKA: Your Honor, this is Jeremy  
18 Wachutka from the NRC staff. One of the things to  
19 note is at the section of the regulations, 50.75, has  
20 to do when the facility is operating so this is to  
21 insure that there's enough funding while you're  
22 operating before decommissioning, whereas,  
23 decommissioning is covered by Section 50.82 and then  
24 that's the difference. That why when you're in  
25 decommissioning you don't have to have the 30-day

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1 notice because during decommissioning there's an  
2 annual reporting requirements, whereas, while you're  
3 operating you're further away from the decommissioning  
4 period and so it's more important to be notified about  
5 what's happening with the decommissioning funds.  
6 Please, Judge Wardwell.

7 ADMIN. JUDGE WARDWELL: Yes, this is Judge  
8 Wardwell. Mr. Wachutka, did you say, if I heard you  
9 correctly you said that Entergy could have gone ahead  
10 and just applied for dual license conditions rather  
11 than adopting all of 50.75(h). Is that what I heard  
12 correctly?

13 MR. WACHUTKA: Your Honor, from -- I mean  
14 the plain language of 50.75(h)(5) discusses that.  
15 They can elect to amend their license conditions as  
16 long as that amendment is consistent with the  
17 regulations. So, they could just change their license  
18 conditions to be consistent with the regulations or  
19 else delete those license conditions and then just  
20 assume the license conditions.

21 ADMIN. JUDGE WARDWELL: And here they're  
22 deleting and assuming, is that correct?

23 MR. WACHUTKA: That's correct, Your Honor.

24 ADMIN. JUDGE WARDWELL: And do you have any  
25 idea why they went that route?

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1 MR. WACHUTKA: I do not, Your Honor. I  
2 would ask Entergy.

3 ADMIN. JUDGE FROEHLICH: Entergy, any  
4 comments on why you went that route as opposed to just  
5 modifying license conditions themselves?

6 MR. BURDICK: Your Honor, this is Stephen  
7 Burdick, Counsel for Entergy.

8 Just deleting license conditions and  
9 complying with the regulations appears to be the most  
10 straightforward approach. The end result is we're  
11 just complying with NRC regulations and it seemed less  
12 complicated than trying to fashion new license  
13 conditions that are consistent with 10 CFR Section  
14 50.75(h) and so it's really -- I think this license  
15 amendment request is fairly straightforward. All  
16 we're trying to do is get rid of a license condition  
17 and comply with those regulations that the Commission  
18 approved shortly after the license conditions were  
19 imposed. So, it's very straightforward. And so we  
20 agree with the staff that the review of this license  
21 amendment request is very narrow. It's not a review  
22 to insure that our amendment increases assurance on  
23 nuclear decommissioning trust issues. It's really  
24 just to insure that we deleted the right license  
25 conditions and then going forward we'll comply with

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1 the NRC regulations.

2 ADMIN. JUDGE WARDWELL: Well, that kind of  
3 touches upon the elephant that's in the closet here  
4 all along. How can you be maintaining those  
5 assurances of those regulations if in turn you  
6 actually had an exemption request to get rid of some  
7 of those license requirements in the regulations and  
8 now in fact have been granted for them. Aren't they  
9 intertwined with this whole license application?

10 MR. BURDICK: Your Honor --

11 ADMIN. JUDGE WARDWELL: Putting -- claim  
12 that maybe that's the reason you went that route is so  
13 that you could then get an exemption so that you  
14 wouldn't have to follow.

15 MR. BURDICK: Our view is that there are  
16 two separate licensing actions here. The first is the  
17 license amendment request that's the subject of this  
18 proceeding. And with that request we're trying to do  
19 what the Commission authorized in the 2002 rule-making  
20 to comply -- get rid of our license conditions and  
21 comply with Section 50.75(h).

22 The exemption request is separate from  
23 this. It's a narrow exemption request. We're not  
24 trying to exempt from 50.75(h) in their entirety.  
25 It's a narrow request and it exempts from certain

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1 portions of 50.75(h) (1) (iv) that says that withdrawals  
2 from the decommissioning trust are only for  
3 decommissioning expenses. So, the exemption there is  
4 narrow. What it's doing is it's allowing us to  
5 withdraw for certain spent fuel management costs,  
6 notwithstanding that specific regulation.

7 And I would point out too this is actually  
8 a duplicative regulation in a way with what is found  
9 in Section 50.82(a) (8) (1) with respect to the uses of  
10 the decommissioning trust funds. 50.82(a) (8)  
11 discusses the use of funds for legitimate  
12 decommissioning expenses and so this is really a  
13 parallel provision here in 75(h) and so it's really  
14 just insuring consistency there.

15 And then the other exemption from  
16 50.75(h) (1) (iv) relates to the 30-day notice  
17 provision. But here again it's related to the narrow  
18 issue of withdrawals for spent fuel management  
19 expenses and to insure that those withdrawals are  
20 treated the same as all other withdrawals from the  
21 nuclear decommissioning trust. So, my point is, it's  
22 a narrow exemption. It's not a broad exemption of  
23 50.75(h) but we do view these are two completely  
24 separate licensing activities.

25 MR. WACHUTKA: Your Honor, this is --



1           ADMIN. JUDGE WARDWELL: Let me just ask if  
2 you had gone that alternate route, the alternate and  
3 acceptable route of just modifying your license  
4 conditions and imported all those that were in  
5 50.75(h) except for the 30-day and the prohibition  
6 against expenditures for spent fuel would in fact had  
7 a successful application in regards to meeting the  
8 regulations that are in 50.75(h)? And is not the  
9 answer, no, because you're missing two components of  
10 it?

11           MR. BURDICK: Your Honor, I think we still  
12 anticipate a successful licensing action here. And I  
13 expect we would have seen challenges notwithstanding  
14 this specific issue. The State has a lot of interest  
15 on this topic and has taken advantage of numerous  
16 forums to raise this issue. So, I think even if had  
17 we had taken that approach I assume we'd still be  
18 talking today.

19           MR. WACHUTKA: Your Honor, this is --

20           ADMIN. JUDGE WARDWELL: That doesn't answer  
21 my question. My question is, would you see -- would  
22 you not be unsuccessful by definition by law because  
23 you couldn't claim that modifying your license  
24 conditions and leaving out those two components were  
25 in accordance with 50.75(h) which is what I understand

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1 you would have had to meet if you went about just  
2 modifying your license conditions, isn't that correct?

3 MR. BURDICK: Your Honor, I guess my  
4 response is we didn't take that approach and, you  
5 know, are licensing action here is not leaving out  
6 those exempted components. Our plan, you know, if  
7 we're successful is for the license amendment to be  
8 issued with all of 50.75(h) applying, you know, as  
9 appropriate. And then the exemptions would apply at  
10 that point to the resulting, if you will, licensing  
11 basis following the licensing amendment.

12 ADMIN. JUDGE WARDWELL: I'm aware of, not  
13 to be rude, but I'm going to interrupt you just for  
14 the sake of time here. I understand what you've done.  
15 My questions was, what about the other avenue and I  
16 gather you don't want to make any other comments on  
17 that, but I don't want to waste time hearing the  
18 repetitiveness of that. I think we need to move on to  
19 other issues.

20 ADMIN. JUDGE FROEHLICH: This is Judge  
21 Froehlich. As we're speaking of decommissioning  
22 expenses, are decommissioning expenses spelled out or  
23 listed anywhere else other than in 10 CFR 50.2 so when  
24 we're talking about, you know, ordinary  
25 decommissioning expenses is that the section of the

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1 regs we should be focused on, I'll ask initially of  
2 Entergy?

3 MR. BURDICK: Your Honor, that is where the  
4 definition of decommissioning is located. But that is  
5 a fairly high-level definition and so there's been a  
6 lot of precedent over the years whether  
7 decommissioning projects and there is certainly  
8 extensive guidance from the NRC on this topic.  
9 There's various NUREG documents that address, you  
10 know, what are legitimate decommissioning expenses.  
11 So, I think, Your Honor, the regulations though that  
12 is the right point.

13 But I would point out and I won't keep  
14 making this point but our view is that the use of  
15 decommissioning expenses is outside the scope of this  
16 proceeding. I won't keep making that point. We want  
17 to make sure our position is clear.

18 ADMIN. JUDGE FROEHLICH: Okay. Then I  
19 guess I would ask counsel for Vermont. Does the  
20 amendment and then expenditures -- the amendment and  
21 the language that's going to be changed does that  
22 involve or how does that involve a significant  
23 reduction in a margin of safety which I guess is  
24 something that you'd have to show or have to bring  
25 forward in your challenge to the LAR?

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1 MR. LANDIS-MARINELLO: Well, first of all,  
2 I guess I would respond that that is something we  
3 would show on the merits of this case. I think the  
4 fact that the questions being asked is an indication  
5 that there are issues that need to proceed to the  
6 merits here. And we've put in signed declarations  
7 from two different people, Dr. Irwin and Tony  
8 Leshinskie, that detail a number of ways in which we  
9 could end up with a shortfall in this fund and also  
10 point out some of the specific ways that Entergy  
11 intends to use this fund to increase the chances of a  
12 shortfall at the end of the day. And argued that  
13 rather than decreasing protections on the fund and  
14 eliminating the 30-day notification requirement that,  
15 if anything, the NRC needs to be moving the other way  
16 and increasing the protections.

17 And specifically here I also -- I think  
18 it's related that I need to respond the claim that  
19 this is a minor exemption that Entergy has sought in  
20 terms of using the fund for essential management  
21 expenses and not giving 30-day notice of those  
22 expenses either. The specific exemption they sough  
23 seeks to spend hundreds of millions of dollars from  
24 the spent fuel management fund and seeks to expend  
25 that in the short term before the site is

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1 radiologically decontaminated. And that creates an  
2 enormous risk that there's at the end of the day a  
3 shortfall in the fund and that's why protections are  
4 needed including the 30-day notification requirement  
5 here which would at least notify people when  
6 expenditures are coming out of the fund. At least  
7 give the NRC and other parties an opportunity to look  
8 further if there's an expenditure that is much larger  
9 than what was anticipated.

10 ADMIN. JUDGE FROEHLICH: But isn't that a  
11 challenge to the exemption as opposed to a challenge  
12 to the LAR?

13 MR. LANDIS-MARINELLO: Well, as the State  
14 has maintained throughout this proceeding they are  
15 directly related and I want to stress that I think  
16 this is a very important discussion about the two  
17 different ways that Entergy could have gone about  
18 this. Had they gone the other route and substituted  
19 the requirements of 50.75(h) for the current license  
20 condition then two things would have happened. One as  
21 the board noted, the LAR would be denied because  
22 that's not compliant with 50.75(h)(5). It's not  
23 consistent. It's missing two requirements. Two, the  
24 State of Vermont would have had clear hearing rights  
25 to challenge that and present evidence including the

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1 evidence that we have cited in the signed declaration  
2 that this would not create a reasonable assurance that  
3 this language that the site would fully be  
4 decommissioned and protect public health, safety and  
5 the environment.

6 And the PFS case is clear that an  
7 applicant cannot use the exemption label to remove  
8 germane matters from a licensing hearing and deny  
9 hearing rights to an interested party in that. And we  
10 think that's what has occurred here and just so the  
11 Board is aware, the State did try to be involved in  
12 the exemption proceeding and formally filed a letter  
13 requesting some sort of process, even just noticing  
14 comment at the very least in that proceeding. The  
15 letter is signed by the Vermont attorney general, the  
16 Department of Public Service and two utilities, Green  
17 Mountain Power and the Vermont Yankee Nuclear Power  
18 Corporation who have an enormous interest in this fund  
19 because they have a 55 percent interest in any money  
20 that's left over at the end of the day from this  
21 decommissioning fund. And we formally asked to be  
22 involved in that process and were denied an  
23 opportunity to be involved in that process. And as  
24 we've laid out in this proceeding, we think that these  
25 matters are certainly connected and under PFS should

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1 be together.

2 MS. MIZUNO: Your Honor, this is Beth  
3 Mizuno for the NRC staff.

4 With respect to PFS, Private Fuel Storage,  
5 that case it's the staff's position that that case is  
6 not applicable here. The exemption and the license  
7 amendment here are two separate actions.

8 The license amendment is not dependent on  
9 getting the exemption. That was the case in PFS.  
10 That is why the exemption was pulled into the license  
11 amendment hearing in PFS. In this case, the two are  
12 not -- sorry. The license amendment is not dependent  
13 on getting the exemption. You can get the license  
14 amendment and say nothing about the exemption. And  
15 that is exactly how the license amendment application  
16 was structured.

17 So, I think it's really important for the  
18 Board to understand that Private Fuel Storage is not  
19 applicable. The exemption as the Board noted just a  
20 moment ago, the exemption is not challengeable here,  
21 not in this proceeding on a license amendment request.

22 ADMIN. JUDGE FROEHLICH: And, Ms. Mizuno,  
23 your reading of Private Fuel Storage would say that  
24 exemptions would be challengeable if they were  
25 directly related to an issue that was in the hearing.

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1 If there was some direct relationship then it would be  
2 permissible?

3 MS. MIZUNO: Your Honor, it's not a matter  
4 of a direct -- well, I'm sorry. The cases do talk in  
5 terms of a direct relationship. But if you look at  
6 what kind of relationship they're talking about,  
7 they're talking about the specific dependent  
8 relationship that runs from the license amendment to  
9 the exemption. In other words, but for the exemption  
10 you couldn't have gotten the license in PFS. It went  
11 to license ability. That's why the PFS case talks  
12 about license ability.

13 If you need the exemption in order to  
14 qualify for the license, yes, then that exemption can  
15 come into the hearing but not the other way around.  
16 And the other way around is the situation we have here  
17 today.

18 ADMIN. JUDGE FROEHLICH: While you mention  
19 the other way around, don't we also have a situation  
20 where we have an exemption to a set of regulations to  
21 which at the current time Entergy is not subject to?

22 MS. MIZUNO: That is correct, Your Honor,  
23 for reasons that I won't go into now. The exemption  
24 and the license amendment did not issue at the same  
25 time. But that is of no consequence. We have an

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1 exemption out there sitting there. We have an  
2 exemption that's sitting there not applicable to  
3 anything. When the thing, meaning the license  
4 amendment if and when it comes into being then the  
5 exemption will apply to it.

6 ADMIN. JUDGE WARDWELL: So, Your Honor,  
7 this is Judge Wardwell.

8 I would like to hear some of these  
9 reasons. It makes no sense to me that an exemption is  
10 approved for a regulation that's not relevant at the  
11 time.

12 MS. MIZUNO: Oh, Your Honor, this is Beth  
13 Mizuno for the staff.

14 Your Honor, the staff has a number of  
15 activities that they are currently engaged in and  
16 their work progresses as best it can given the inputs  
17 that they get from various office and for, you know,  
18 a lot of reasons activities get delayed somewhat.

19 ADMIN. JUDGE WARDWELL: This had such a  
20 high priority because the license amendment hadn't  
21 even been addressed yet that you wanted to get these  
22 exemptions approved. I don't see how that -- that's  
23 what you're implying that you have such a high  
24 priority in regards to getting this exemption request  
25 approved for a license amendment that isn't even

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1 approved yet.

2 MR. WACHUTKA: Your Honor, this is Jeremy  
3 Wachutka from the NRC staff.

4 It is worth noting that the exemption  
5 request it does accomplish something on its own  
6 without the license amendment request. Even without  
7 the license amendment request, the exemption request  
8 allows Entergy to make irradiated spent fuel  
9 management disbursements from the decommissioning  
10 trust fund after 30 days prior written notification.  
11 So, there was a reason to approve the exemption  
12 request because it does accomplish something even  
13 without the license amendment request being approved.

14 ADMIN. JUDGE WARDWELL: Thank you. This is  
15 Judge Wardwell again.

16 I'd like to go back to Vermont. After the  
17 two scenarios that could have been done here and using  
18 the scenario that actually had been done where as I  
19 understand it Entergy is submitting this license  
20 amendment request to replace the existing conditions  
21 and accepting all of the regulations in 50.75(h). Why  
22 isn't it our only obligation to just look to see  
23 whether or not they've done that? Why isn't that  
24 enough for us to approve this license amendment? And  
25 as a hypothetical, let's say for instance the

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1 exemption request wasn't even submitted would you have  
2 actually had enough information to even submit a  
3 request for a hearing under that situation? Another  
4 way to ask that is don't you agree that they could  
5 just do what they'd done and say we are going to  
6 follow all of 50.75(h) and let the license amendment  
7 move forward? Why isn't that a suitable thing and  
8 that's all we need to judge and say, gee, they've done  
9 it and so they should get the license amendment?

10 MR. LANDIS-MARINELLO: I agree that that is  
11 a harder case for the state of Vermont if there's no  
12 exemption request that has been filed. And if Entergy  
13 has put forth simply that they were going to swap it  
14 out for the provisions of 50.75(h) in their entirety.

15 As we've noted in our filing, the State  
16 would still have an opportunity to request a hearing  
17 on that and to talk about the specific circumstances  
18 here where Entergy is on record in multiple places  
19 including this decommissioning cost estimate of a plan  
20 to use the decommissioning fund for expenses like  
21 insurance and property taxes which do not meet the  
22 definition of radiological decommissioning. And just  
23 so the Board is aware, there is NUREG 1713 which puts  
24 some more explanation on what qualifies as  
25 decommissioning and page 4 of that says it's limited

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1 to activities that reduce residual contamination. And  
2 Entergy is on record here saying that they're going to  
3 spend this money on reasons that do not reduce  
4 radiological contamination.

5 ADMIN. JUDGE WARDWELL: If they had not  
6 gone on record saying that and there was no exemption  
7 request at this point in time what else would you  
8 bring up in regards to objecting to this license  
9 amendment request?

10 MR. LANDIS-MARINELLO: Again, that would be  
11 an even harder case for the State of Vermont if that  
12 were the situation. I think one response that I have  
13 is that we would be able to move to amend any decision  
14 that was made on that at a later point at which point  
15 Entergy went on record of how they intend to use the  
16 fund or applies for the exemption request. And so we  
17 would have that option available to us.

18 But, I mean, the main point here though is  
19 that that is not --

20 ADMIN. JUDGE WARDWELL: Let me interrupt  
21 you also. I don't want to get into the main point  
22 going after that. I want to stay focused on my line  
23 of questioning if we could. Okay?

24 MR. LANDIS-MARINELLO: Sure.

25 ADMIN. JUDGE FROEHLICH: I'm interrupting

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1 you for the sake of time. And so with that then if,  
2 in fact, at some future date, six months from now  
3 after the license amendment had been approved, they  
4 file for an exemption request do you agree that, in  
5 fact, the exemption request doe snot allow for any  
6 hearing by a Board such as us?

7 MR. LANDIS-MARINELLO: No, we do not agree  
8 with that because here it would be -- even if it  
9 happened after the fact, it would still be directly  
10 related to the license condition that we had  
11 previously. And this is also -- I think the  
12 fundamental point here is right now under the license  
13 conditions we are entitled to a 30-day notice whenever  
14 the expenditure is going to come out of the funds.  
15 And tomorrow if this LAR is granted, we lose that  
16 right.

17 Now, it doesn't matter how Entergy gets  
18 there whether it's the two-step process they've laid  
19 out or if they put it -- if they were clear in the LAR  
20 what exactly they were intending to do here from the  
21 beginning and it was looked at with the exemption  
22 request, we have a right to have a hearing on that and  
23 present issues such as what Entergy said it plans to  
24 use the fund for. And to give one example even if  
25 they weren't on record, we would also have a right to

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1 put Dr. Irwin on the stand and give his testimony  
2 about the strontium-90 that was discovered in places  
3 where it had not previously been after the  
4 decommissioning cost estimate was submitted by  
5 Entergy. And we would be able to have him testify as  
6 he's put in his signed declaration here that that  
7 could greatly increase the cost of decommissioning in  
8 this plan and it makes it all the more important to  
9 know exactly how this money is coming out of that fund  
10 on a regular basis.

11 ADMIN. JUDGE FROEHLICH: I guess that's --

12 MR. BURDICK: Your Honor?

13 ADMIN. JUDGE FROEHLICH: Yes.

14 MR. BURDICK: This is Entergy counsel. Can  
15 I respond to just a couple of issues quickly? I'll be  
16 very quick but everything that we've heard from the  
17 State now are issues that are outside the scope of  
18 this proceeding. So issues related to the use of  
19 decommissioning funds, strontium, all these other  
20 issues just simply are not related to this license  
21 amendment request which has a very narrow request of  
22 deletion of license conditions in place of compliance  
23 with the Section 50.75(h) requirements. And so I just  
24 wanted to emphasize that point. These are all outside  
25 the scope and do not need to be decided by the Board.

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1           Additionally, just really quickly. I want  
2 to go back to what's been referred to as the second  
3 option in Section 50.75(h) (5). This is the first time  
4 we've heard of someone putting forth this option and  
5 so the State seems to be discussing this. So, this is  
6 the first time. So, it's really a late argument.

7           But I just want to emphasize. We're doing  
8 exactly what the regulations allow, what the statement  
9 of consideration during this 2002 and 2003 rule-making  
10 allowed. We're consistent with the other license  
11 amendment that has been similar with Comanche Peake.  
12 I'm not aware of anyone who has just amended a license  
13 conditions to try to conform to ths 50.75(h)  
14 requirement. Out exemption is consistent with a long  
15 line of Commission practice for exemptions for  
16 decommissioning purposes.

17           ADMIN. JUDGE WARDWELL: Has anyone  
18 challenged this like Vermont has? This is Judge  
19 Wardwell again for Entergy.

20           MR. BURDICK: No, I don't believe there  
21 have been any hearing requests on this. But I think  
22 the reason is because the amendment request is very  
23 narrow. I think it's only been requested in one place  
24 and that's Comanche Peake to obtain a license  
25 amendment along these same lines and that one I don't

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1 believe was challenged. But I think, again, it's  
2 because the scope is very narrow, you know, all these  
3 other issues are outside of scope.

4 Even a 30-day notice provision, you know,  
5 that is one change here. But the Commission has  
6 addressed that directly during the rule-making as  
7 we've already discussed today.

8 ADMIN. JUDGE FROEHLICH: Mr. Burdick, isn't  
9 Entergy's compliance with -- this is Judge Froehlich.  
10 I'm sorry. Isn't Entergy's compliance with 50.75(h)  
11 (1)(iv) within the scope of the license amendment  
12 request?

13 MR. BURDICK: No, it is not within the  
14 scope. The compliance is not within the scope. What  
15 is within scope is just whether than regulation  
16 applies, not how the regulation can be complied with  
17 Entergy going forward. So, what is within scope is  
18 whether we can delete our license conditions and apply  
19 those regulations, not how we're going to comply with  
20 those in the future.

21 ADMIN. JUDGE FROEHLICH: And while I have  
22 you, Mr. Burdick, the precedent or at least the  
23 precedent that you cite in the license amendment  
24 application relies on, I guess, the procedures and  
25 what happened in the Comanche Peake case. But wasn't

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1 that amendment -- wasn't Comanche Peak at that time in  
2 the process of being decommissioned when the license  
3 amendment was granted? I'm sorry, was Comanche Peak  
4 in the process of decommissioning when that amendment  
5 was granted?

6 MR. BURDICK: No. No, it was not.

7 ADMIN. JUDGE FROEHLICH: It was earlier.  
8 And Comanche Peak -- where is Comanche Peake?

9 MR. BURDICK: it's located in Texas.

10 ADMIN. JUDGE FROEHLICH: Okay. And do the  
11 State of Texas as part of the state complication  
12 process in that case didn't they file or a state that  
13 had no comments on the LAR? They certainly didn't  
14 oppose it, did they?

15 MR. BURDICK: That sounds correct, Your  
16 Honor.

17 ADMIN. JUDGE FROEHLICH: Okay. And going  
18 back to Comanche Peake and I read that recently. That  
19 license amendment application included a request for  
20 exemption. I mean it was all in one neat package and  
21 it was all, I guess, before the staff at one time.  
22 That Comanche Peake license amendment application had  
23 a number of exemption requests along with it, didn't  
24 it?

25 MR. BURDICK: Your Honor, my request

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1 recollection is there were other requests sought  
2 together and so in their -- I have the date, July  
3 25th, 2002, license amendment request. They sought  
4 three things. They had an administrative correction  
5 to license condition language from a previous license  
6 transfer order.

7 ADMIN. JUDGE FROEHLICH: Right.

8 MR. BURDICK: They had deletion of one  
9 instance of a duplicative provision on violation  
10 reporting requirements. And then finally revision to  
11 certain technical specifications related to steam  
12 generating tube inspection. So, it was a much broader  
13 issue originally. Later on they did amend the  
14 specific request related to nuclear decommissioning  
15 trust issues to be similar to the one that we proffer  
16 here once there was the rule-making that had addressed  
17 this issue. And so ultimately what was approved, I  
18 believe, was very similar with respect to  
19 decommissioning trust issues as is before the NRC  
20 right now.

21 And one quick point on that as well. I  
22 know this has come up in respect to the environmental  
23 review that was performed there. I think some of the  
24 pleadings were discussed how there is an environmental  
25 assessment there with the Comanche Peake precedent.

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1 But I think as we're talking about the scope of the  
2 Comanche Peake request, it was much broader than just  
3 this specific issue that is related to Vermont Yankee  
4 and they had already performed an environmental  
5 assessment there. And so rather than re-perform the  
6 environmental review they did point to that back to  
7 that original environmental assessment. But while we  
8 were on this topic I just wanted to make that point  
9 that that precedent is not directly applicable with  
10 respect to Vermont Yankee.

11 ADMIN. JUDGE FROEHLICH: Okay. I'll ask  
12 the Commission staff. The procedure used in Comanche  
13 Peake was to my understanding included both the  
14 license amendment request and certain exemptions from  
15 the regulation. That was all handled in one package,  
16 at least initially. And, I guess, when it was  
17 reviewed it was reviewed by, you know, the staff  
18 altogether.

19 In this case, it appears that the staff is  
20 really taking two almost independent looks at the  
21 license amendment request and the exemption request.  
22 Is that correct?

23 MS. MIZUNO: Yes, Your Honor. This is Beth  
24 Mizuno.

25 The staff is treating these as two

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1 separate actions.

2 MR. WACHUTKA: And, Your Honor, this is  
3 Jeremy Wachutka from the NRC staff.

4 It's also important to note that a license  
5 amendment request is a different tool than an  
6 exemption request. License amendments have to do with  
7 changing the license. And so to delete license  
8 conditions those require license amendments but to  
9 exempt from certain portions of the regulation those  
10 require exemption requests. So, they are really two  
11 separate processes and you have to choose the correct  
12 process for the correct goal that you need to  
13 accomplish and so that's why to amend the license,  
14 delete license conditions you have to do a license  
15 amendment and to exempt certain parts of the  
16 regulation you have to do an exemption. And an  
17 exemption does not have a hearing opportunity.

18 ADMIN. JUDGE FROEHLICH: Right. Is it the  
19 same group or people within the staff, Mr. Wachutka,  
20 who look at license amendment requests and those who  
21 look at exemption requests or is the same people just  
22 on different days wearing different hats?

23 MS. MIZUNO: Sorry, Your Honor, this is  
24 Beth Mizuno and I'd be happy to answer.

25 The staff is the same. However, I want

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1 you to understand the staff is working on more than  
2 just the Vermont Yankee case. They have a number of  
3 other plants that they or plants and facilities that  
4 they are addressing.

5 ADMIN. JUDGE FROEHLICH: Does the staff  
6 agree with Entergy that compliance with  
7 50.75(h)(1)(iv) is not within the scope of this  
8 proceeding?

9 MS. GHOSH: Your Honor, this is Anita Ghosh  
10 for the staff.

11 Yes, the staff agrees. 50.75(h)(5) states  
12 that the license amendment must be in accordance with  
13 the provisions of Paragraph (h) of this section so  
14 that's what would be in scope, not whether they're in  
15 compliance.

16 MR. WACHUTKA: And, Your Honor, compliance  
17 is an oversight matter and oversight matters are  
18 outside the scope of license amendment proceedings as  
19 the Commission has recently made clear in the St.  
20 Lucie, Fort Calhoun and Diablo Canyon proceedings.

21 MR. LANDIS-MARINELLO: And this is Kyle for  
22 the State.

23 I guess I understand that the staff's  
24 position is a general matter but here Entergy has  
25 filed and staff has approved Entergy's request to not

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1       comply with specific provisions of (h) but rather to  
2       be exempted from them and just looking at the first  
3       page of this license amendment request it says being  
4       put forward on the basis that upon approval of this  
5       amendment, the provisions of 10 CFR 50.75(h) that  
6       specify that regulatory requirements for  
7       decommissioning trust funds will apply. And that's no  
8       longer the case.

9               MR. BURDICK: Your Honor, this is Stephen  
10       Burdick counsel for Entergy.

11               Just in response to that. I want to make  
12       it very clear that, you know, we're not planning to  
13       amend the license amendment request. The results of  
14       that amendment that we're seeking is at 50.75(h) will  
15       apply. And then at that point then the exemption  
16       would apply to just very specific portions of that  
17       related to irradiated fuel management expenses. But  
18       other types of costs and everything else that could be  
19       covered by that regulation would be unaffected. So,  
20       the regulation would still apply which is exemption  
21       for very specific issues.

22               MR. LANDIS-MARINELLO: And this is Kyle for  
23       the State.

24               I think that it's a much fairer statement  
25       to say that very little of that regulation 50.75(h) (5)

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1 is left after the exemption. Essentially, as I looked  
2 at it there's a provision of a prude investment  
3 standard that would still be there. I believe that's  
4 also in the Master Trust Agreement. So, I don't think  
5 it's a correct characterization to say that everything  
6 else would apply and this is just a minor part being  
7 cut out from the exemption.

8 ADMIN. JUDGE KENNEDY: So, this is Judge  
9 Kennedy.

10 And I'm not sure this adds any clarity but  
11 it makes me wonder if in this particular case this  
12 license amendment request is denied what is  
13 controlling here? What is controlling on Entergy in  
14 the events that the license amendment request is  
15 denied? We have some exemption requests that are  
16 granted and, I believe, we have some license  
17 conditions that are still in play. What would be  
18 controlling here?

19 MR. BURDICK: Your Honor, this is --

20 ADMIN. JUDGE KENNEDY: I guess I should  
21 have directed it to Entergy first.

22 MR. BURDICK: Your Honor, this is Stephen  
23 Burdick, counsel for Entergy.

24 If the license amendment request were to  
25 be rejected then the license conditions would continue

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1 to be in place. But the exemption would still be  
2 issued and, in particular, as the staff had mentioned,  
3 one of the exemptions is from 10 CFR Section 50.82(a)  
4 (8) apply with respect to the use of the nuclear  
5 decommissioning trust funds for legitimate  
6 decommissioning expenses. So, that has already  
7 effectuated the ability to withdraw irradiated fuel  
8 management expenses from the nuclear decommissioning  
9 trust. So, the other exemptions that would apply, you  
10 know, once the license amendment request is granted  
11 are to be consistent with them.

12 ADMIN. JUDGE KENNEDY: Does the staff agree  
13 with that assessment?

14 MS. GHOSH: Yes, Your Honor.

15 ADMIN. JUDGE KENNEDY: But we would have  
16 the license conditions and one of the exemption  
17 requests that had been granted would be in play.

18 MR. BURDICK: That is correct, Your Honor.  
19 Stephen Burdick, counsel for Entergy.

20 ADMIN. JUDGE KENNEDY: I just wanted to  
21 make sure I heard you correctly. Thank you.

22 MR. LANDIS-MARINELLO: And this is Kyle for  
23 the State.

24 And I guess I would just add to that that  
25 with the license conditions still in place one of

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1 those conditions is that if there are any material  
2 amendments to the decommissioning trust agreement,  
3 those require notification to the NRC and the NRC has  
4 an ability to intervene in that case and it's not part  
5 of this proceeding but the State has made clear its  
6 position that the Master Trust Agreement as it stands  
7 doe snot allow use of the fund for management before  
8 the site has been radiologically decontaminated. But  
9 I think that's another reason why the best solution is  
10 to look at all of these matters together as FPS and  
11 Honeywell indicate should be the norm in a situation  
12 like this.

13 ADMIN. JUDGE KENNEDY: Counsel for the  
14 State, you mentioned the Master Trust Agreement how  
15 does that play into this whole proceeding here? Is  
16 that a document that's different than the  
17 decommissioning trust fund?

18 MR. LANDIS-MARINELLO: The Master Trust  
19 Agreement is what guides the decommissioning trust  
20 when it is specific to this for Vermont Yankee and I  
21 think one of the issues the State has been running  
22 into is that a lot of thee matters are being looked at  
23 generically and there are specific provisions in the  
24 Master Trust Agreement for Vermont Yankee that provide  
25 protections that other facilities do not have and the

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1 main one is that that Master Trust Agreement is  
2 explicit that the funds cannot be used for spent fuel  
3 management until the site has been radiologically  
4 decommissioned. And this is not a minor matter. This  
5 is something that as their Public Service Board has  
6 said would heavily litigate it. That's a direct quote  
7 from the Public Service Board order at the time of the  
8 sale in terms of how the funds be used and where  
9 remainders from the funds would go. And this is  
10 Vermont sale money that --

11 ADMIN. JUDGE WARDWELL: Excuse me. This is  
12 Judge Wardwell.

13 This Master Trust Agreement who is it  
14 between? Who is agreeing to this? Who has agreed to  
15 this?

16 MR. LANDIS-MARINELLO: So, the Master Trust  
17 Agreement was required by NRC at the time and I  
18 believe that is one of the license conditions that is  
19 in here. Yes, like 3(j)(i). The Decommissioning  
20 Trust Agreement must be in a form acceptable to the  
21 NRC. So, it's signed by the utility that I believe is  
22 Vermont Yankee Nuclear Power Corporation, the former  
23 owner and Entergy and the Bank of New York Mellon as  
24 I understand it seeing as far as the Master Trust  
25 Agreement. But then it also had to be put before the

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1 NRC before the sale could be finalized so the NRC  
2 could approve that the conditions in there would  
3 protect these funds for their intended purpose,  
4 radiological decommissioning not spent fuel  
5 management. And it also has to be approved by the  
6 Vermont Public Service Board in the sense that they  
7 have to know what provisions would be in there and  
8 there are some changes that were made in response to  
9 rate payer concerns since Vermont rate payers had  
10 funded the majority of the principal funds that  
11 created this fund.

12 ADMIN. JUDGE WARDWELL: But how is this  
13 trust agreement within our bailiwick? Why is it part  
14 of this proceeding or is it?

15 MR. LANDIS-MARINELLO: Well, there is a  
16 case from the 7th Circuit Court of Appeals which talks  
17 about the NRC being the policemen of the  
18 decommissioning trust funds and certainly having the  
19 authority to have oversight over how the expenses are  
20 being made from that fund and as I mentioned before  
21 license conditions 3(j)(4) says any material  
22 amendments to that Master Trust Agreement need to be  
23 approved by the NRC and it is the State's position  
24 that Entergy should have submitted an amendment to  
25 that if they were going to use the fund in a way that

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1 was not allowed under the Master Trust Agreement.

2 ADMIN. JUDGE WARDWELL: Well, that Trust  
3 Agreement isn't before us at this time, is it? All of  
4 just what you said is probably very well true but  
5 that's not what this proceeding is about, is it?

6 MR. LANDIS-MARINELLO: I think that this  
7 proceeding is focused more on the 30-day notification,  
8 the reason being that License Commission 3(j)(4) does  
9 have a parallel provision in 50.75(h)(1)(iii). It  
10 would still be the State's preference that it remain  
11 a license condition so that there's an opportunity for  
12 a hearing if there are material amendments and Entergy  
13 attempts to eliminate that condition whereas when it's  
14 a regulation there is a redemption process where the  
15 State and rate payers are denied a hearing.

16 ADMIN. JUDGE WARDWELL: Thank you.

17 MR. BURDICK: Your Honor, this is Stephen  
18 Burdick. If I could just respond to these couple of  
19 points real quick.

20 We are not in agreement with the State on  
21 the Master Trust Agreement issue. It is the nuclear  
22 decommissioning trust for Vermont Yankee and so it is  
23 covered by certain NRC regulations or must comply with  
24 certain NRC regulations so the NRC does have some sort  
25 of oversight authority over it for that purpose since

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1 your compliance with the regulation. But it is not  
2 part of this proceeding. It's not related to license  
3 amendment requests and so it is not within the  
4 jurisdiction of this proceeding. So, I think that's  
5 very important and certainly we have some  
6 disagreements with other points the State has made.  
7 But, again, those issues are outside the scope of this  
8 proceeding.

9 MR. LANDIS-MARINELLO: And this is Kyle  
10 from the State.

11 I guess it's just important though to keep  
12 in mind that in 2002 when that sale occurred and when  
13 this license condition was placed there in the first  
14 place that these were assurances that were given to  
15 the State of Vermont and to our rate payers when the  
16 utility turned over \$310 million at the time as part  
17 of this sale. And that is all the money that was ever  
18 in this fund. It's worth more now. It's at about now  
19 \$665 million because of interest that is gained but  
20 Entergy has never put any money into this fund.

21 And at the time of the sale at the License  
22 Commission we were given reassurance that the Master  
23 Trust Agreement and the License Commission itself that  
24 this money would be protected in specific ways and  
25 that was important to Vermont allowing that sale to

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1 occur. And, again, in the rule in 2002 Vermont was  
2 again given reassurances by explicit language in  
3 50.75(h)(iv) which talks about the (h)(1)(iv) which  
4 talks about the fund only being used for  
5 decommissioning expenses and not for other activities.  
6 And now Entergy is trying to use the fund in ways that  
7 were not envisioned by the time of the sale or by the  
8 rule in 2002 and they're trying to do it without  
9 Vermont ever getting the hearing on the matter.

10 MR. BURDICK: This is Stephen Burdick,  
11 counsel for Entergy.

12 I'm going to sound like a broken record  
13 but just be clear. Those issues are outside the scope  
14 of this proceeding and are completed unrelated to  
15 what's been requested in the license amendment  
16 request. We have differences of opinion on that and  
17 the State has raised those in numerous other forms as  
18 well and so we're aware of their position. But that  
19 is not within the scope of this proceeding. Thank  
20 you.

21 MR. LANDIS-MARINELLO: And this is Kyle.  
22 Sorry to go back and forth but just the rule in 2002  
23 is clear that only a one-for-one trade was allowed and  
24 the exemption request is directly relevant here  
25 because it makes it not a one-for-one trade. A trade

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1 one for practically nothing.

2 ADMIN. JUDGE FROEHLICH: And could I ask  
3 the NRC staff. Could the NRC staff grant the license  
4 amendment request if it conflicted with the Master  
5 Trust Agreement?

6 MS. MIZUNO: Your Honor, I need a moment,  
7 please. This is Beth Mizuno.

8 MS. GHOSH: Your Honor, this Anita Ghosh  
9 for the NRC staff.

10 The staff would be able to grant the  
11 license amendment without the Master Trust Agreement  
12 being amended. But if it were amended later on then  
13 the staff could object to any material change in the  
14 Master Trust Agreement. But there's no dependency  
15 here on the Master Trust Agreement needing to be  
16 changed first.

17 MS. MIZUNO: Also, I'm sorry to jump in,  
18 Your Honor. This is Beth Mizuno.

19 But the Master Trust Agreement speaks in  
20 terms of NRC regulations and NRC actions. And, you  
21 know, give the NRC primacy. So, you know, the  
22 dependence as Ms. Ghosh put it does not argue for us  
23 being controlled by this Master Trust Agreement at  
24 all.

25 ADMIN. JUDGE KENNEDY: Maybe, again, going

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1 back to an older issue. This is Judge Kennedy.

2 I want to go back to the -- I know we  
3 brought up -- the State brought up some cost estimates  
4 as an indication that the Trust Fund would be depleted  
5 and not allowing Entergy to complete the  
6 decommissioning.

7 The specific line items that you  
8 identified were those in the decommissioning cost  
9 estimate?

10 MR. LANDIS-MARINELLO: Yes. This is Kyle  
11 for the State.

12 Those specific line items, I believe, were  
13 wrong, the decommissioning cost estimate. I believe  
14 we also noted some other public statement that Entergy  
15 had made since then including their belief they can  
16 use the decommissioning trust fund not just for  
17 emergency planning which is not a decommissioning  
18 expense itself but also for their attorneys who are  
19 involved in emergency planning activities like LA-1  
20 and LA-2 from the same docket.

21 ADMIN. JUDGE KENNEDY: But would the State  
22 agree that if the line items were in the  
23 decommissioning cost estimate, the decommissioning  
24 cost estimate showed that the site could be  
25 decommissioned and restored is there any real problem

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1 there for those line items that are in the  
2 decommissioning cost estimate that you've identified?

3 MR. LANDIS-MARINELLO: Yes, those are not  
4 expenses that fall within the NRC's definition of  
5 decommissioning and, again, these are all estimates.  
6 We don't actually know how much it's going to cost  
7 until the site is cleaned up and, in fact, the only  
8 thing we know so far is that that cost estimate is out  
9 of date because it doesn't take into account the  
10 strontium-90 that was found on the site afterwards and  
11 that has not been analyzed for how it affects the cost  
12 estimate.

13 And the other part of this is as I  
14 mentioned, the utilities, Green Mountain Power and  
15 Vermont Yankee Nuclear Power Corporation have a  
16 remainder interest in unspent funds. So, even if  
17 Entergy puts it in the decommissioning cost estimate  
18 and the NRC which did not approve that but denied to  
19 take action to disapprove it, even if they list it  
20 there, there's a right that these utilities have to be  
21 heard on whether those are legitimate expenses or  
22 whether Entergy should be paying those through another  
23 manner that doesn't deprive our rate payers of the  
24 remainder amount.

25 And there's also just one more piece of

1 that is that the money that was collected for this  
2 fund was collected at the time by a regulated entity  
3 and subject to FERC approval and so there's another  
4 piece of this which is the FERC regulations which say  
5 that that money is limited to decommissioning expenses  
6 and that any remainder money must be returned to the  
7 rate payers.

8 ADMIN. JUDGE KENNEDY: Is all of this  
9 residual language captured in the Master Trust  
10 Agreement or is that somewhere else even yet?

11 MR. LANDIS-MARINELLO: It is in the Master  
12 Trust Agreement, specifically Exhibit D to the Master  
13 Trust Agreement, I believe is what talks about where  
14 the residual goes.

15 ADMIN. JUDGE KENNEDY: All right. Thank  
16 you.

17 MR. LANDIS-MARINELLO: Yes, and I think the  
18 comments that the State submitted to the NRC in this  
19 matter before we filed the petition for a hearing we  
20 filed comments. Those included exhibits that included  
21 I believe Exhibit 2 is the Master Trust Agreement  
22 itself.

23 ADMIN. JUDGE KENNEDY: All right. Thank  
24 you.

25 ADMIN. JUDGE FROEHLICH: This is Judge

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1 Froehlich.

2 Question for the Commission staff. Is  
3 there a necessity to do an environmental review as  
4 part of the license amendment request?

5 MR. WACHUTKA: Your Honor, this is Jeremy  
6 Wachutka from the NRC staff.

7 For a license amendment request the NRC  
8 will conduct an environmental review pursuant to NEPA  
9 but it has not yet determined in this case whether  
10 this will be accomplished through an environmental  
11 assessment or through a categorical exclusion, both of  
12 which are permitted under NEPA. However, to the  
13 extent that Entergy has suggested the use of a  
14 categorical exclusion in its application, the NRC does  
15 not believe that such use would be unreasonable as  
16 Vermont argues.

17 ADMIN. JUDGE FROEHLICH: You're keeping  
18 your options open as I understand it?

19 MR. WACHUTKA: Well, it's just -- I mean,  
20 it's in process, Your Honor, so the NRC staff we  
21 haven't completed our review of the license amendment  
22 request but to the extent that Vermont argues that a  
23 categorical exclusion wouldn't be allowed, the NRC  
24 staff disagrees with that. The NRC's regulations  
25 expressly provide for categorical exclusions and so to

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1 say that in general we couldn't use a categorical  
2 exclusion would be an inadmissible challenge to the  
3 Commission's rules and also Vermont has not  
4 demonstrated that it would be unreasonable for the NRC  
5 to use the specific categorical exclusion identified  
6 by Entergy which is 10 CFR Section 51.22(c)(10) and  
7 this categorical exclusion includes the issuance of an  
8 amendment that "changes record-keeping, reporting or  
9 administrative procedures or requirements." So,  
10 consistent with this, the license amendment request  
11 could be considered an administrative change. This is  
12 because all the license request is doing is deleting  
13 a set of license conditions that insure the adequacy  
14 of Vermont Yankee decommissioning trust fund and  
15 assuming instead the provisions that the NRC has found  
16 that do the same thing. The only difference as we  
17 discussed between a decommissioning trust fund license  
18 condition and the decommissioning trust fund  
19 regulations is that under the regulations a licensee  
20 does not have to provide 30 days period notice for  
21 decommissioning disbursements after decommissioning  
22 has begun. But the decommissioning trust rule itself  
23 explicitly found that such an additional reporting  
24 requirement after decommissioning has begun is not  
25 necessary because this annual reporting requirement is

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1 already required of facilities undergoing  
2 decommissioning. Therefore, again, this is another  
3 challenge to the NRC's rules and something that the  
4 Commission itself has already determined that was not  
5 necessary.

6 ADMIN. JUDGE FROEHLICH: And, Mr. Wachutka,  
7 is there a time line of the staff on their  
8 environmental review and NEPA review?

9 MR. WACHUTKA: As with all other license  
10 amendment requests, Your Honor, the safety evaluation  
11 includes an environmental evaluation and that's issued  
12 at the same time as the license amendment request is  
13 granted or denied.

14 ADMIN. JUDGE FROEHLICH: Interesting.  
15 Okay.

16 Judge Wardwell, do you have any further  
17 questions or anything else you'd like to ask of the  
18 parties?

19 ADMIN. JUDGE WARDWELL: I do not.

20 ADMIN. JUDGE FROEHLICH: And, Judge  
21 Kennedy?

22 ADMIN. JUDGE KENNEDY: I'm done, thank you.

23 ADMIN. JUDGE FROEHLICH: Okay. Would the  
24 parties care to make brief closing arguments?

25 Is there something the parties would like

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1 to do?

2 MR. BURDICK: Your Honor, this is Stephen  
3 Burdick, counsel for Entergy.

4 There was one more point that I wanted to  
5 respond to but it doesn't need to be as part of a  
6 closing argument. So, we're find if I can make the  
7 point and then dispense with closing arguments.

8 ADMIN. JUDGE FROEHLICH: Does the State of  
9 Vermont staff care to make closing comments?

10 MR. LANDIS-MARINELLO: This is Kyle for the  
11 state. Yes, we would like to take that opportunity.

12 ADMIN. JUDGE FROEHLICH: Okay.

13 MR. WACHUTKA: Your Honor, the NRC staff  
14 would also like a closing argument.

15 ADMIN. JUDGE FROEHLICH: Okay. In that  
16 case I'd like to hear first from Entergy followed by  
17 the staff and the final argument from the State of  
18 Vermont.

19 Please limit your closing comments to two  
20 or three minutes, please.

21 All right. Mr. Burdick?

22 MR. BURDICK: Okay. Thank you, Your Honor.  
23 This is Stephen Burdick, counsel for Entergy.

24 I'd like to emphasize a couple of  
25 different themes from today and I know I've raised

1 repeatedly that the issues raised by the State are  
2 outside of the scope of this proceeding. And we've  
3 heard the state make a number of comments today  
4 particularly with respect to the use of nuclear  
5 decommissioning trust funds and the deficiency of the  
6 funds to complete decommissioning.

7 We understand that the State has some  
8 disagreements there but these are not part of this  
9 license amendment proceeding. The proceeding is  
10 narrow. It relates to the deletion of license  
11 conditions in exchange for compliance with Section  
12 50.75(h). Those issues are simply outside the scope  
13 of this proceeding.

14 I would also note that this is not the  
15 only opportunity the State has made to raise these  
16 issues. They have submitted numerous letters to the  
17 NRC, responses from the NRC, they've raised these  
18 issues in their comments on the post-shutdown  
19 decommissioning activities report which included the  
20 site specific decommissioning cost estimate. The NRC  
21 is well aware of these and those are more appropriate  
22 forums than this one right now to challenge these  
23 issues. So, those issues are outside the scope of  
24 this proceeding and should be rejected.

25 Again, with respect to the first point I

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1 started with in my opening statement, Entergy is  
2 simply trying to do what the Commission has already  
3 authorized. It's trying to do what is authorized or  
4 identified in 10 CFR Section 50.75(h) (5) and that is  
5 to delete these license conditions and to impose the  
6 requirements of Section 75(h) upon Vermont Yankee.

7 The State's challenges to the contrary are  
8 impermissible challenge to that rule and the  
9 statements that were made in those rule-makings.

10 Your Honor, I think is all I would like to  
11 raise. We appreciate the opportunity to respond to  
12 the questions today, provide some additional thought.  
13 But in summary, the state has not identified any  
14 inadmissible contentions and so the hearing request  
15 should be rejected in its entirety.

16 Thank you.

17 ADMIN. JUDGE FROEHLICH: Thank you, Mr.  
18 Burdick.

19 The NRC staff, please.

20 MR. WACHUTKA: Your Honor, the NRC would  
21 like to stress that the license amendment that there  
22 will not somehow be an infamously reduction in safety  
23 as a result of granting the license amendment request  
24 which I think was some arguments that were raised in  
25 this oral argument.

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1           The license conditions were found to e  
2           sufficiently protective of safety when they were  
3           imposed upon the license in 2002. Later when the  
4           decommissioning trust fund regulation was enacted,  
5           that, too, was found to be sufficiently protective of  
6           the public health and safety. Therefore, all that  
7           this license amendment is requesting is to move from  
8           one standard that has been found to be safe by the NRC  
9           to another standard that has been found to be safe by  
10          the NRC so there isn't somehow an evaluation that  
11          needs to be done as to whether there will be a  
12          reduction in safety. All that is happening is that  
13          Vermont is challenging the NRC's decommissioning trust  
14          fund rules which the NRC has found to be safe.

15                 Also, the NRC would like to stress that  
16          the license amendment request and the exemption  
17          request are separate and independent of one another  
18          and they do not fall within the exception of PFS.  
19          This separateness is illustrated by the fact that the  
20          approval of one would accomplish something independent  
21          of the approval of the other as we have discussed.  
22          For instance, the approval of the exemption request  
23          even without the approval of the license amendment  
24          request allows Entergy to make irradiated spent fuel  
25          management disbursements from the decommissioning

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1 trust fund after 30 days of prior written  
2 notification. Similarly, the approval of the license  
3 amendment request even without the approval of the  
4 exemption request would allow Entergy to make  
5 decommissioning disbursements from the decommissioning  
6 trust fund without 30 days prior written notification  
7 after decommissioning has begun. Therefore, the scope  
8 of this proceeding is properly limited to the license  
9 amendment summary request and it does not include the  
10 exemption request.

11 Furthermore, with respect to the license  
12 amendment request, all of Vermont's arguments are an  
13 infamous challenge to the decommissioning regulations.  
14 First, the license amendment request purports to do  
15 exactly what is allowed by the Commission's  
16 regulations at 10 CFR Section 50.75(h) (5), that is to  
17 delete the decommissioning trust fund license  
18 conditions and assume instead the decommissioning  
19 trust fund regulations.

20 Second, the effect of the license  
21 amendment request of removing a requirement for 30  
22 days prior written notification of decommissioned  
23 disbursements after decommissioning has begun was  
24 previously found by the Commission to be acceptable as  
25 part of its decommissioning trust fund regulation.

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1 Third, the use of categorical exclusions  
2 to satisfy NEPA is expressly provided for by the  
3 Commission's regulations.

4 And, finally, the Commission's  
5 decommissioning rules only provide for a hearing on  
6 decommissioning at the end of the hearing process.  
7 We've discussed here the PSDAR and the decommissioning  
8 cost estimate and all of these by operation of the  
9 rule --the decommissioning rule at 50.82 they do not  
10 provide an option for a hearing. The hearing comes  
11 within two years of license termination which in this  
12 case is within two years of 2073.

13 Therefore, for these reasons, Your Honor,  
14 the contentions are inadmissible and the hearing  
15 request should be denied.

16 Thank you.

17 ADMIN. JUDGE FROEHLICH: Thank you.

18 And Mr. Landis-Marinello, you have the  
19 last word.

20 MR. LANDIS-MARINELLO: Yes, thank you, Your  
21 Honor.

22 First, I just want to respond to the last  
23 point that came up about the environmental analysis  
24 and the National Environmental Policy Act and the  
25 decision interpreted from the Supreme Court and the

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1 D.C. Circuit are very clear that the entire point of  
2 that law that's been in place for decades is to look  
3 at environmental impacts before a decision is made.  
4 And we are hearing for the first time five minutes ago  
5 that staff intends to do any analysis on that and the  
6 analysis should have occurred before a decision was  
7 made. So, we think that is a clear error in what  
8 occurred here procedurally.

9 Moving on to the bigger issue of looking  
10 at whether this is a change that was envisioned by  
11 50.75(h) (5) and the 2002 rule, I think has been clear  
12 from this argument in the filings that are before the  
13 Commission. The only way this can be seen as possibly  
14 compliant with that regulation is if this Board turns  
15 a blind eye to what I believe one of the Board Members  
16 referred to as the elephant in the closet. And while  
17 that maybe would not have been an option for the Board  
18 before this exemption request was granted the  
19 exemption request has now been granted. The elephant  
20 is out of the room. It is clear to all of the parties  
21 exactly what is being approved the moment this Board  
22 signs off on this license amendment request. And in  
23 that context this cannot possibly be seen as compliant  
24 with 50.75(h) (5) and the 2002 rule.

25 And, lastly, there's been a lot of

1 discussion about what's within this proceeding and  
2 what is not and as we the PFS and the Honeywell cases  
3 do not depend on what the Applicant decided to put  
4 before the Board or the Commission. That would be a  
5 dangerous precedent for that to determine hearing  
6 rights of another party such as the State of Vermont.  
7 It depends on whether the matters are directly related  
8 and here there is not doubt that they are. And the  
9 test that staff was putting forth well, if one  
10 accomplishes something that the other doesn't then  
11 they're separate. And that is just not the test from  
12 under the Atomic Energy Act, under the Administrative  
13 Procedures Act and PSF and Honeywell. The test is  
14 whether there is a connection -- there's clearly a  
15 connection here and the matters need to be looked at  
16 together for this Board to fulfill its duty under the  
17 Atomic Energy Act of determining whether public  
18 health, safety and the environment is protected if  
19 it approve this license amendment request.

20 And to the extent that there is any doubt  
21 on that matter, on the connection between these  
22 matters, the State would suggest that this Board has  
23 full authority that you certify questions to the  
24 Commission and that other parties have noted that the  
25 State has raised concerns in other proceedings and

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1 that is true. But we have not had a hearing on these  
2 matters and we should get a hearing on these matters  
3 and they are directly related. And we think this  
4 Board can deny the LAR as it stands but to the extent  
5 there's any doubt it should certify questions to the  
6 Commission and set the entire matter including related  
7 matters for a hearing.

8 Thank you.

9 ADMIN. JUDGE FROEHLICH: I want to thank --  
10 this is Judge Froehlich.

11 I want to thank the parties for their  
12 answers to our questions today. I do note that a new  
13 Contention 5 was recently filed by the State of  
14 Vermont. Answers would be due on July 31st and a  
15 reply fro Vermont o August 7th.

16 The Board will endeavor to render its  
17 decision in this matter within 45 days of this  
18 argument and we will take into consideration all that  
19 comes in in the pleadings as well as the transcript  
20 and the argument of counsel that we heard today.

21 I want to thank our Court Reporter, Mr.  
22 Borden, and the parties for your answers and your  
23 participation in today's oral argument. Your answers  
24 have been helpful and constructive to us and I thank  
25 you for your time.

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1                   If there's nothing further from any party,  
2                   from any of my colleagues, we'll stand adjourned.

3                   Thank you.

4                   (Whereupon, the above-entitled matter went  
5                   off the record at 3:36 p.m.)

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