



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

April 27, 2015

William Dean
Director
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Dockets 50-333, 50-271, and 50-293;
NRC Enforcement Proceeding No. 2013-0192

Dear Director Dean:

The Office of New York State Attorney General respectfully submits the following comments on the March 27, 2015 Proposed Director's Decision in Enforcement Proceeding NRC-2013-0192 initiated pursuant to 10 C.F.R. § 2.206 concerning various Entergy facilities. For the reasons set forth in the accompanying comments, the Office requests that you withdraw the Proposed Decision and further direct the Staff to conduct a thorough analysis of Entergy's financial capabilities to operate and decommission the facilities.

Thank you for your attention to the comments and request. If there are questions, please contact me.

Very truly yours,

Charlie Donaldson

Charlie Donaldson
Assistant Attorney General
Environmental Protection Bureau

cc: Hon. Annette Vietti-Cook, Secretary, NRC
Jennifer Uhle, Deputy Director, NRR
Michelle G. Evans, Director, Division of Operating Reactor Licensing, NRR

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION

William M. Dean, Director
Division of Nuclear Reactor Regulation

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In re:

Entergy Nuclear Operations, Inc.

James A. FitzPatrick Nuclear Power Plant	Docket No. 50-333
Entergy Nuclear FitzPatrick, LLC,	License No. DPR-59

Pilgrim Nuclear Power Station	Docket No. 50-293
Entergy Nuclear Generation Company, and	License No. DPR-35

Vermont Yankee Nuclear Power Station	Docket No. 50-271
Entergy Nuclear Vermont Yankee, LLC.	License No. DPR-28

April 27, 2015

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STATE OF NEW YORK
COMMENTS
ON
PROPOSED DECISION

Office of the Attorney General
for the State of New York
120 Broadway
Albany, New York 10271

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SUMMARY

The Office of New York State Attorney General Eric T. Schneiderman respectfully submits the following comments on the March 27, 2015 Proposed Director's Decision¹ in Enforcement Proceeding NRC-2013-0192 initiated by a 10 C.F.R. § 2.206 petition filed by various citizen groups² on March 18, 2013 ("petition") challenging the current financial qualifications of four nuclear power licensees including the owner of the James A. FitzPatrick Nuclear Power Plant near Oswego, New York, to operate nuclear power plants or manage spent nuclear fuel and site restoration after a nuclear power plant shuts down.³

This office previously submitted comments in this proceeding on November 27, 2013 and December 2, 2013.⁴ New York has an interest in this proceeding because Entergy Corporation controls four nuclear facilities in New York – FitzPatrick, Indian Point Unit 1, Indian Point Unit 2, and Indian Point Unit 3. Therefore, the financial qualifications of Entergy and its corporate affiliates including Entergy Nuclear Operations, Inc., to safely operate and decommission FitzPatrick and the Indian Point facilities and fully restore those sites is of critical importance to New York.

Meaningful Nuclear Regulatory Commission oversight of licensees is essential for ensuring radiation safety while nuclear power plants operate and timely and thorough decommissioning after plants shut down so that the sites do not blight a community or its environment. Adequate and objective assessment of citizen allegations of licensee deficiencies is an essential part of that oversight. New York has an interest in the NRC's performing its duties in this proceeding adequately and objectively.

In this proceeding NRC has not made a meaningful effort to assess allegations that bear on the safe operation of nuclear power plants in New York, and has not objectively assessed Entergy's financial ability to cover increasing costs related to the operation and maintenance of the plants, their decommissioning, and site restoration. The end product of the deficiencies is a Proposed Decision that the record does not support, and a need for further investigation and an objective assessment of the facts that the investigation finds. Given these deficiencies, the Office of the Attorney General requests that the Director of the Office of Nuclear Reactor Regulation

¹ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director's Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161).

² Alliance for a Green Economy, Citizens Awareness Network, Pilgrim Watch, and Vermont Citizens Action Network.

³ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Petition to the U.S. Nuclear Regulatory Commission Requesting Enforcement Action Against Entergy Nuclear Operations, Inc.; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; and Entergy Generating Company (March 18, 2013) (*available at* ML13133A161).

⁴ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from State of New York Office of the General Office (Nov. 27, 2013) (Dec. 2, 2013 as corrected) (*available at* ML15027A458).

withdraw the proposed decision and refer the matter back to Staff with instructions to conduct a fulsome and systemic analysis of Entergy's financial abilities.

BACKGROUND

Among other things, the petitioners pointed to evidence that the FitzPatrick and Vermont Yankee nuclear power plants were unprofitable and asked NRC to determine the current financial qualifications of Entergy Nuclear FitzPatrick, LLC ("FitzPatrick"), and Entergy Nuclear Vermont Yankee, LLC ("Vermont Yankee"), the owners of these plants, to pay for safe operation. FitzPatrick and Vermont Yankee are wholly-owned subsidiaries of Entergy Corporation, a publicly traded company listed on the New York Stock Exchange. Petitioners also asked NRC to investigate the financial qualifications of two other Entergy Corporation subsidiaries, Entergy Nuclear Generating Company ("Pilgrim"), which owns Pilgrim Nuclear Power Station in Massachusetts, and Entergy Nuclear Operations, Inc. ("ENO"), which supplies and manages the personnel who operate the three subject nuclear power plants.⁵

ENO operates FitzPatrick's, Pilgrim's and Vermont Yankee's nuclear power plants but does not own the power the plants produce and deliver to the electric grid. Instead, ENO is paid by FitzPatrick, Pilgrim and Vermont Yankee from the proceeds from the plants' electric output. This means that if FitzPatrick, Pilgrim or Vermont Yankee is operating at a loss, payments to ENO may not be sufficient to cover ENO's expenses of operating the plant.

FitzPatrick, Pilgrim, and Vermont Yankee are "merchant" electric power generators. Merchant generators obtain income from output they sell wholesale. Unlike traditional electric utilities, merchant generators have no captive customer base that can be forced to make up losses if wholesale power prices are not sufficient to cover operating costs. If a merchant generator's plant is not delivering electricity to the grid, that revenue source ceases and it then relies on other financial resources from its corporate family.

Retiring a merchant nuclear power plant creates both immediate and long term revenue issues. Although a retired plant no longer produces income, the owner must pay for maintenance of the radioactive spent fuel that the plant's reactor produced during operation. The responsible corporate parties also will have to pay for site restoration which could include the cleanup of radiation, toxic chemicals, and other contaminants outside of NRC programs and standards. Without income from the plant to pay for spent fuel maintenance or site restoration, a plant owner either has to have funds set aside when the plant was operating or some other source of funds to pay for these necessary elements of plant retirement.

⁵ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Petition to the U.S. Nuclear Regulatory Commission Requesting Enforcement Action Against Entergy Nuclear Operations, Inc.; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; and Entergy Generating Company (March 18, 2013) (*available at* ML13133A161).

After receiving comments and information from the citizen petitioners, ENO, the Massachusetts Attorney General's Office,⁶ the Vermont Attorney General's Office,⁷ and the State of New York Office of the Attorney General⁸ on these issues, NRC on March 27, 2015 published a Proposed Director's Decision for comment.⁹

DISCUSSION

A. Inadequate and Defective Process

NRC's investigation of the petitioners' allegations was inadequate and the process for handling the submissions was fundamentally and fatally flawed. NRC did not address several serious petitioner allegations and made only a minimal effort to obtain information from the licensees. Additionally, a letter from two Senators, which was potentially relevant to the question of why NRC delayed seeking information from Entergy, could not be located in NRC's public records using ordinary record search methods. Moreover, in violation of stated NRC procedure certain Attorney General's Offices' submissions were not put in the NRC's public files until long after NRC received the submissions, or were not made public for months beyond the time mandated by NRC procedure. Finally, the Proposed Decision does not contain an objective description of the procedural history, nor does it address fundamental issues petitioners and commenters raised. For these reasons, the Director must withdraw the Proposed Decision and direct Staff to perform an adequate investigation of the issues raised by the petitioners and the States.

1. NRC's processing of the petitioners' claims in this proceeding has been inadequate and defective.

NRC's effort to evaluate FitzPatrick's, Pilgrim's, Vermont Yankee's, and ENO's current financial qualifications has been inadequate and defective. Although the petitioners, the Massachusetts Attorney General's Office,¹⁰ the Vermont Attorney General's Office,¹¹ and the

⁶ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from Massachusetts Attorney General's Office (Oct. 20, 2014) (*available at* ML15027A462).

⁷ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from Vermont Attorney General's Office (Jan. 27, 2015) (*available at* ML15039A011).

⁸ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from State of New York Office of the General Office (Nov. 27, 2013) (Dec. 2, 2013 as corrected) (*available at* ML15027A458).

⁹ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director's Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161).

¹⁰ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from Massachusetts Attorney General's Office (Oct. 20, 2014) (*available at* ML15027A462).

State of New York Office of the Attorney General¹² submitted extensive evidence of licensee financial problems, to date the NRC's sole investigation action in this proceeding has been to send ENO a five question request for voluntary information.¹³ In addition to making only a limited effort, NRC did not issue its request for information until June 2, 2014, fourteen months after petitioners challenged the licensees' financial qualifications to operate nuclear power plants.¹⁴ Notably, the Proposed Decision makes no reference to these submissions or the problematic delay with the Staff's investigatory process.

NRC's Agencywide Documents Access and Management System (or "ADAMS") file for the June 2, 2014 request for voluntary information indicates that NRC did not follow its established procedure when processing the Request For Information. The request's ADAMS accession number (ML13357A024) indicates that the request was entered in an apparently nonpublic section of ADAMS on December 23, 2013, five months before NRC sent ENO the request. The request's ADAMS entry description indicates that the public was not given access to the request for voluntary information until June 30, 2014; four weeks after NRC sent ENO the request and six months after the request was put on ADAMS.¹⁵

The processing of the June 2, 2014 request for voluntary information was not consistent with stated NRC procedure. NRC Management Directive 3.53, "NRC Records and Document Program," specifies that generally "NRC Staff-Generated Documents . . . appropriate for release are released to the public on the 6th working day after the date of the document."¹⁶ As indicated by the fact that it is publicly available on ADAMS, the June 2, 2014 request for voluntary information is an NRC staff-generated document appropriate for release. The 162-day delay between the entry of the request for voluntary information on ADAMS and the transmission of

¹¹ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from Vermont Attorney General's Office (Jan. 27, 2015) (*available at* ML15039A011).

¹² NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from State of New York Office of the General Office (Nov. 27, 2013) (Dec. 2, 2013 as corrected) (*available at* ML15027A458).

¹³ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Request for Voluntary Response to 2.206 Petition Regarding Financial Qualifications of James A. FitzPatrick Nuclear Power Plant, Pilgrim Nuclear Power Plant, and Vermont Yankee Nuclear Power Plant (June 2, 2014) (*available at* ML13357A024).

¹⁴ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Request for Voluntary Response to 2.206 Petition Regarding Financial Qualifications of James A. FitzPatrick Nuclear Power Plant, Pilgrim Nuclear Power Plant, and Vermont Yankee Nuclear Power Plant, Request for Voluntary Response to 2.206 Petition Regarding Financial Qualifications of James A. FitzPatrick Nuclear Power Plant, Pilgrim Nuclear Power Station, and Vermont Yankee (June 2, 2014) (*available at* ML13357A024).

¹⁵ *Id.*

¹⁶ NRC Management Directive 3.53, "NRC Records and Document Program" (revised March 15, 2007) (*available at* ML071160026), at Handbook 2, p. 20.

the request to Entergy raises the question of why the request was delayed. The 28-day delay between the request for voluntary information's transmission to Entergy and public access to the request raises the different question of why the public was denied access to the request beyond the 6th business day after the NRC sent ENO the request.

A single limited request for information from the subjects of an inquiry, and delaying public access to the request well beyond the time specified in agency procedure are not consistent with adequate or effective process. The Proposed Decision does not discuss why NRC has made only a cursory attempt to examine the licensees' financial qualification or why NRC delayed its single voluntary interrogatory for so long. Two Senators have asked NRC to explain the delay. Specifically on November 14, 2013 Senators Markey and Sanders wrote to the NRC Chairman¹⁷ and requested:

1. A copy of each of the RAIs that were prepared and approved for submittal to Entergy for its merchant reactors on June 5, 2013.
2. All documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related to the NRC decision not to issue and publish those RAIs to Entergy's merchant reactors.
3. For the past year (2012-2013), (a) all dates on which Entergy personnel met with or spoke by telephone to any NRC personnel (including NRC staff, Commissioners and Commissioners' staff) on matters that are in any way related to compliance with or NRC efforts to assure compliance with 10 CFR § 50.33, (b) the titles of both the Entergy and NRC personnel with whom each such meeting or telephone call took place, (c) any written communications provided by Entergy to the NRC during such meeting or telephone call.
4. All documents (including emails, correspondence, meeting notes, telephone logs, calendar entries or other materials) related to any NRC direction to its staff not to send any financial RAIs to licensees whose reactors are experiencing degraded safety indicators.¹⁸

However, NRC has not answered the Senators' questions. The Proposed Decision should include a thorough explanation of the delay, Entergy-NRC interactions, and NRC management actions to Staff.

Another NRC process problem made it difficult for the public to locate the Senators' November 14, 2013 letter in the NRC's files. An ADAMS search using a Senator's name and the date of the letter, the docket number for the license for any of the nuclear plants named in the letter, or any available ADAMS search parameter other than the letter's accession number does not locate the letter on ADAMS. The result is that the Senators' letter can be accessed on

¹⁷ November 14, 2013 Letter from Senators Edward J. Markey and Bernard Sanders to NRC Chairman Allison Macfarlane (*available at* ML13318A869).

¹⁸ *Id.*, at 2.

ADAMS only if a searcher knows the document's accession number before looking for the letter. Documents difficult to locate on ADAMS using normal search parameters are not consistent with adequate or effective process.

A further NRC process problem prevented the public from accessing the various State submissions in this proceeding. NRC did not post the submissions by various State Attorneys General within the maximum 10 days NRC procedure allows.¹⁹ ADAMS entry information indicates that NRC provided public access to the State of New York Office of the Attorney General's December 2, 2013 submission and the Massachusetts Office of the Attorney General's October 20, 2014 submission on February 9, 2015, respectively 13 months and 3 months after NRC received these documents.²⁰ ADAMS entry information indicates that NRC made the Vermont Attorney General's January 27, 2015 submission public on April 7, 2015, 2 months after receipt, and the State of New York Office of the Attorney General's November 27, 2013 submission public on April 20, 2015, almost 16 months after receipt.²¹ NRC Management Directive 3.53 directs 8-hour processing of documents originating outside the agency and public access to external documents appropriate for release on the 6th business day after receipt

Accession numbers for the Office of the Attorney Generals' submissions also indicate that NRC posted to the *non-public* portion of ADAMS the State of New York Office of the Attorney General's November 27, 2013 submission (ML14016A361) on January 16, 2014, the State of New York Office of the Attorney General's December 2, 2013 submission (ML15027A458) and the Massachusetts Office of the Attorney General's October 20, 2014 submission (ML15027A462) on January 27, 2015, and the Vermont Attorney General's January 27, 2015 submission (ML15039A011) on February 8, 2015. Nothing in the record explains why the Attorneys General submissions were not placed on ADAMS within the one work day specified by NRC Management Directive 3.53.²²

Even if NRC's discovery and document handling in this proceeding were adequate and effective (which they were not), as written the Proposed Decision would undermine its credibility by not identifying and analyzing all the issues the petitioners raised, describing the petitioners' evidence, identifying the Attorneys General that submitted evidence, or laying out

¹⁹ NRC Management Directive 3.53, "NRC Records and Document Program" (revised March 15, 2007) (*available at* ML071160026), at Handbook 2, p. 11 & 19.

²⁰ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from State of New York Office of the General Office (Nov. 27, 2013) (Dec. 2, 2013 as corrected) (*available at* ML15027A458); NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from Massachusetts Attorney General's Office (Oct. 20, 2014) (*available at* ML15027A462).

²¹ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from Vermont Attorney General's Office (Jan. 27, 2015) (*available at* ML15039A011); NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Information Letter from State of New York Office of the General Office (Nov. 27, 2013) (*available at* ML14016A361).

²² *Id.*

the evidence on both sides of an issue and explaining NRC's decision. For example, the Proposed Decision mentions only the petitioners' challenge to ENO's financial qualifications to operate a nuclear power plant – but makes no mention that the petitioners challenged the financial qualifications of Fitzpatrick, Pilgrim and Vermont Yankee as well.²³

Rather than describing petitioners' evidence such as the trade press analysis putting in question the licensees' finances, the Proposed Decision sets out a string of dates and ADAMS accession numbers. Readers have no idea how much evidence petitioners presented, what the Attorneys General said, or how credible these submissions are. On its face the Proposed Decision appears to be responding to free floating allegations rather than substantive evidence. Moreover, the Proposed Decision neither disclosed that three Attorneys General submitted information nor analyzed the states' position.

The biggest deficiency in the Proposed Decision is the absence of any comparison of the evidence on both sides of an issue and any explanation of how NRC reached its conclusion. For example, the Proposed Decision states that the petitioners assert that ENO no longer meets the financial qualifications to operate FitzPatrick's, Pilgrim's, or Vermont Yankee's nuclear power plants, and that NRC met with petitioners "to clarify the basis for the petition."²⁴ Yet the Proposed Decision does not describe the petitioners' bases for challenging ENO's qualifications. Instead, the Proposed Decision lists, without analysis, ENO's arguments and evidence and concludes that ENO is financially qualified to operate FitzPatrick's and Pilgrim's nuclear power plants.²⁵ (By the time the Proposed Decision was published for comment Vermont Yankee had permanently retired its nuclear power plant - due to economic considerations.) Such a one-sided analysis is not only unpersuasive; it undermines the public's confidence in NRC Staff.

B. Issues Not Addressed

1. The Proposed Decision does not address the current financial qualifications of Entergy to operate and decommission nuclear power plants.

The petition, at 1, refers to FitzPatrick, Pilgrim, Vermont Yankee, and ENO as "Entergy," and asks NRC to investigate the current financial qualifications of each of these

²³ Compare NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director's Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161) *with, e.g.*, NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Petition to the U.S. Nuclear Regulatory Commission Requesting Enforcement Action Against Entergy Nuclear Operations, Inc.; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; and Entergy Generating Company (March 18, 2013) (*available at* ML13133A161) and NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Transcript of May 7, 2013 Teleconference with Office of Nuclear Reactor Regulation Petition Review Board, at p. 20, ln 22 to p. 21, ln 12.

²⁴ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director's Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161), at 2.

²⁵ *Id.*, at 6 – 8.

licensees to operate a nuclear power plant.²⁶ *See also, e.g.,* Transcript of May 7, 2013 Teleconference with Office of Nuclear Reactor Regulation Petition Review Board, at p. 20, ln 22 to p. 21, ln 12.²⁷

Although NRC accepted the petition, the Proposed Decision addresses only one of the four licensees that petitioners challenged – Entergy Nuclear Operations. The Proposed Decision does not address the current financial qualifications of three challenged licensees – FitzPatrick, Pilgrims and Vermont Yankee – to operate a nuclear power plant. The only licensee the Proposed Decision addresses is ENO.²⁸ In effect, NRC addressed only a quarter of the financial qualification issues the petitioners raised. (The inadequate basis for NRC’s finding concerning ENO’s current financial qualifications to operate nuclear plants is discussed below.)

NRC must withdraw the Proposed Director’s Decision and investigate all the issues petitioners have raised. New York requests that the Director refer the matter back to the Staff’s financial regulators and direct that Staff initiate a thorough financial “stress test” analysis of Entergy and its subsidiaries.

2. The Proposed Decision does not address the current financial qualifications of Entergy to manage spent nuclear fuel.

The petition, at 2, asks NRC to investigate FitzPatrick’s, Pilgrim’s, Vermont Yankee’s, and ENO’s financial capacity to cease reactor operations.²⁹ One essential licensee task when permanently retiring a reactor is the management of spent nuclear fuel until responsibility for the spent fuel is transferred to another party. Unlike vertically integrated utilities that can use their power distribution monopoly to pass spent nuclear fuel management costs through to their captive retail customers, merchant entities that retire nuclear power plants have only their retained funds or financial support from corporate parents and affiliates to cover such costs.

NRC refused to examine the licensees’ ability to finance spent fuel management. The Proposed Decision, at 5, observes that NRC does not include “the costs of spent [nuclear] fuel management . . . in the financial assurance for decommissioning for nuclear reactors.”³⁰ Despite

²⁶ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director’s Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161).

²⁷ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Transcript of May 7, 2013 Teleconference (May 27, 2013) (*available at* ML13135A001).

²⁸ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director’s Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161), at 8 & 11.

²⁹ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Petition to the U.S. Nuclear Regulatory Commission Requesting Enforcement Action Against Entergy Nuclear Operations, Inc.; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; and Entergy Generating Company (March 18, 2013) (*available at* ML13133A161).

³⁰ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director’s Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161).

NRC Staff's preference for accounting treatment purposes, NRC cannot deny that the management of spent nuclear fuel after a reactor retires is an unavoidable and essential function that constitutes a real obligation and business cost. As such, it requires a meaningful analysis and response by NRC's financial analysis group as well as in the Proposed Decision. NRC's accounting approach neither eliminates the need for such management, nor answers the question of how such management will be paid for after a reactor owned by a merchant power generator ceases operation. NRC should not pretend otherwise and retreat from inquiring as to how such management will be paid for.

The inadequacy of NRC's current treatment of spent fuel management costs is evident for an examination of Vermont Yankee's plan.³¹ NRC regulations, specifically 10 C.F.R. § 50.54(bb), require nuclear power licensees to submit to the NRC a written spent fuel management plan that includes an explanation of how such management will be paid after a reactor retires and ceases to deliver electricity to the grid. Vermont Yankee has submitted a spent fuel management plan that ENO currently estimates will operate through 2052 and cost \$368 million (2014 dollars).³²

ENO proposes using a hoped-for "surplus" in the Vermont Yankee nuclear decommissioning trust to pay for managing the plant's spent fuel.³³ However, Vermont Yankee's spent fuel management plan also includes \$145 million in "credit facilities" guaranteed by Entergy Corporation.³⁴ The stated purpose for these credit facilities is to provide operating cash while Vermont Yankee seeks reimbursement from its nuclear decommissioning trust.³⁵

One major problem with the Vermont Yankee spent fuel management plan is that Vermont Yankee's nuclear decommissioning trust does not have surpluses to pay for the plan. Currently Vermont Yankee's decommissioning trusts hold less than is needed to pay just reactor decommissioning costs. For example, ENO proposes completing the decommissioning of

³¹ Except for FitzPatrick, the other Entergy Corporation merchant nuclear power plant owners have written spent fuel management plans. However, such plans are hypothetical until a reactor retires. *See* NRC Dockets 50-293, Entergy Nuclear Operations, Inc. Pilgrim Nuclear Power Station, Spent Fuel Management Plan Submittal in accordance with 10 CFR § 50.54(bb) (June 7, 2007) (*available at* ML071700121); Indian Point 1 & 2 (*available at* ML083040378); Indian Point 3 (*available at* ML103540233) and Palisades (*available at* ML061140185).

³² *See, e.g.*, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Update to Irradiated Fuel Management Program Pursuant to 10 CFR § 50.54(bb) (Dec. 19, 2014) (*available at* ML14358A251), at 3.

³³ *Id.*, at 7 – 8.

³⁴ *Id.*

³⁵ *Id.*

Vermont Yankee's retired reactor in 2075 at a cost of \$817 million (2014 dollars).³⁶ Vermont Yankee's nuclear decommissioning trust contains only \$655 million as of October 2014.³⁷

ENO assumes that over time that the Vermont Yankee nuclear decommissioning trust will increase in value sufficiently to pay for full reactor decommissioning, management of spent fuel, and restoration of the reactor site.³⁸ Under NRC's predictive financial accounting, NRC assumes that the principal in the decommissioning accounts appreciates at a rate of 2% per year in constant dollars above any increases in decommissioning costs. However, there is no guarantee that over this extended period the real cost of decommissioning the Vermont Yankee facilities and site will not rise above NRC's predictions or that the Vermont Yankee nuclear decommissioning trust will maintain its current value, much less increase sufficiently to pay for spent fuel management and site restoration in addition decommissioning the reactor. What if Staff's optimistic financial predications and assumptions do not occur? Will the Director and Deputy Director guarantee to the States that NRC Staff will make up the shortfall? Will the NRC Commissioners guarantee that the Commission will make up the shortfall? Will they ensure that the NRC annual budget(s) increase to cover such costs?

Even if over time nuclear decommissioning trusts produce surpluses in an amount sufficient to pay for managing a retired reactor's spent fuel during decommissioning, such surpluses would not be adequate for spent fuel management immediately after a reactor ceases operation. As the decommissioning of the Vermont Yankee facilities demonstrates, the problem is cash flow. Assuming that ENO's \$817 million (2014 dollars) estimate of the cost of decommissioning is credible, as of October 2014 the \$655 million (2014 dollars) Vermont Yankee decommissioning trust fund had no surplus. It is unlikely that in the five months since October 2014 Vermont Yankee's decommissioning trust has closed much of the \$162 million gap between its worth and the \$817 million (2014) dollars) needed to retire Vermont Yankee's reactor. Currently there is no Vermont Yankee nuclear decommissioning trust surplus from which to pay for spent fuel management.

Vermont Yankee would need a significant current surplus in its decommission trust now to pay for spent fuel management. ENO estimates that between 2014 and 2023 Vermont Yankee will incur \$252 million in post-reactor retirement spent fuel management costs.³⁹ This is a substantial sum. To partially cover the \$252 million gap, Entergy Corporation is guaranteeing \$145 million in credit facilities.⁴⁰ Even with these guarantees, there is still a \$107 million gap (2014 dollars) between the expected \$252 million (2014 dollars) in Vermont Yankee spent fuel management expenses through 2023 and the \$145 million in credit facilities that Entergy Corporation is guaranteeing.

³⁶ See, e.g., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Update to Irradiated Fuel Management Program Pursuant to 10 CFR § 50.54(bb) (Dec. 19, 2014) (*available at* ML14358A251), at 9-10.

³⁷ *Id.*, at 7.

³⁸ *Id.*, at 13-15.

³⁹ *Id.*, at 5.

⁴⁰ *Id.*, at 7-8.

The Proposed Decision does not address the ability of Vermont Yankee's financial capacity to finance spent nuclear fuel management even as Vermont Yankee faces these costs. Nor does the Proposed Decision address the financial capacities of FitzPatrick, Pilgrim, or ENO to manage spent nuclear fuel when their reactors retire. Instead, Staff asks the Director to sign a decision that ignores these real costs.

New York requests that instead of adopting the Proposed Decision, the Director refer the question of spent fuel management back to the Staff and direct Staff to initiate a thorough financial analysis of how Entergy will finance such activities at its merchant facilities. Such an investigation of the licensees' financial qualifications should, at a minimum, examine how each licensee expects to pay for spent nuclear fuel management after reactor retirement, whether the licensee anticipates cash flow shortfalls for spent fuel management, how the licensee expects address any anticipated cash flow shortfall not covered by existing financial guarantees, whether Entergy Corporation or any other party has agreed to assist with cash flow or any other financing for spent fuel management, and how much assistance, if any, the corporate parent or subsidiaries have committed to the licensee now.

3. The Proposed Decision does not address the current financial qualifications of Entergy to restore power plant sites.

The petition, at 2, asked NRC to investigate FitzPatrick's, Pilgrim's, Vermont Yankee's, and ENO's financial capacity to restore the site after a reactor ceases operations.⁴¹

The Proposed Decision does not address capability to finance site restoration. Instead, it observes, at 5, that NRC does not include "the costs of . . . site restoration . . . in the financial assurance for decommissioning for nuclear reactors."⁴² As with spent nuclear fuel management (discussed above), the fact that NRC does not require licensees to provide financial assurance for site restoration costs neither eliminates the need for such restoration, answers the question of how such costs will be paid for after a reactor owned by a merchant power generator ceases operation, nor precludes NRC from inquiring as to how such costs will be financed. Moreover, the fact that site restoration involves the removal or remediation of non-radiological contaminants or the remediation of radiological contaminants to levels below NRC standards does not preclude NRC's inquiring into how site restoration costs will be financed. Similarly, nothing precludes NRC from investigating whether such site restoration funds for Entergy's merchant sites have been "co-mingled" with NRC-regulated radiological decommissioning trust funds.

⁴¹ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Petition to the U.S. Nuclear Regulatory Commission Requesting Enforcement Action Against Entergy Nuclear Operations, Inc.; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; and Entergy Generating Company (March 18, 2013) (*available at* ML13133A161).

⁴² NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director's Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161).

New York requests that the Director remand the matter back to Staff and direct Staff to initiate an investigation into FitzPatrick's, Pilgrim's, Vermont Yankee's, ENO's, and Entergy's capacity to pay for site restoration, including the removal of contaminants not under NRC jurisdiction.

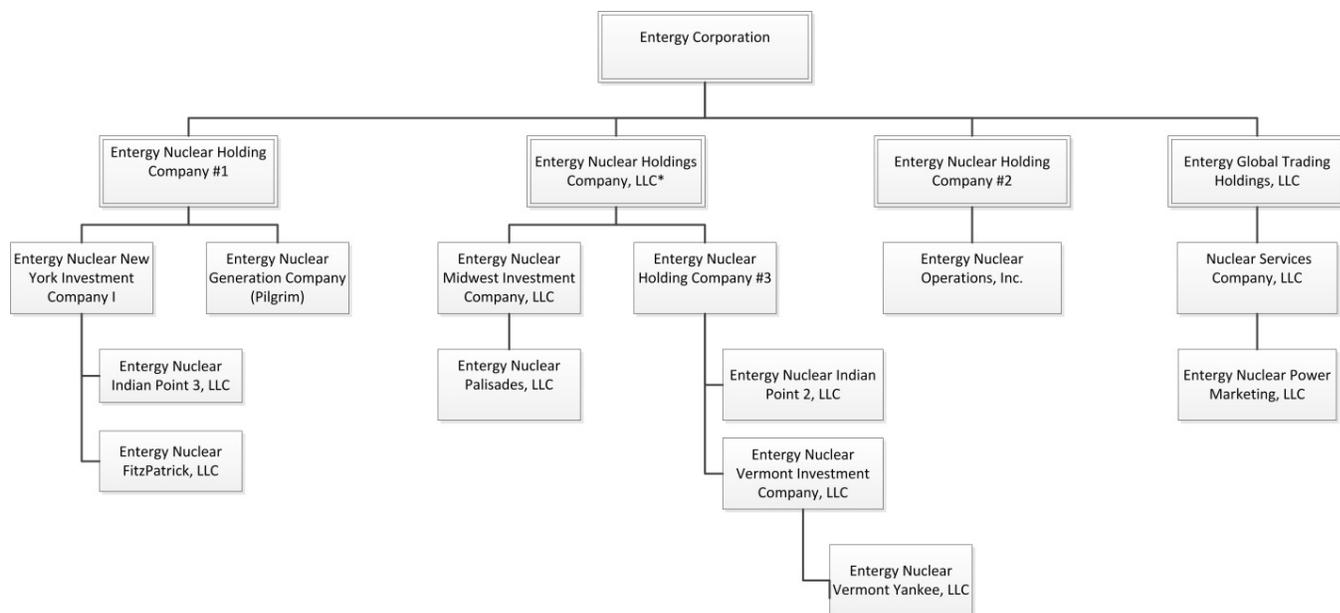
4. The Proposed Decision does not address Entergy Corporation's change of the legal nature of its subsidiary that owns Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Indian Point 2, LLC.

As the Massachusetts Attorney General's Office pointed out, in December 2013 Entergy Nuclear Holding Company, the Entergy Corporation subsidiary that owns Entergy Nuclear Indian Point 2, LLC, and owns Entergy Nuclear Vermont Yankee, LLC, changed its legal status from a Delaware *corporation* to a Delaware *limited liability company*.⁴³ ENO asserts that Entergy Nuclear Holding Company's change in legal status had no effect on the ownership or management of the licensees it owns.⁴⁴ The Proposed Decision does not acknowledge this change or investigate or evaluate the question of whether Entergy Nuclear Holding Company's change in legal status had any effect on Vermont Yankee's current financial qualifications to support reactor decommissioning, spent nuclear fuel management, or site restoration, or through Vermont Yankee, on ENO's financial qualifications to operate FitzPatrick's or Pilgrim's nuclear power plants.

The following diagram illustrates the Entergy Corporation structure following the change.

⁴³ NRC Dockets 50-003, 50-247 & 72-051, 50-255 & 72-007, and 50-271 & 72059, 50-155 & 72-043, Notice of Change in Corporate Form of Entergy Nuclear Holding Company (Nov. 19, 2013) (*available at* ML13343A170). Contrary to NRC Management Directive 3.53, NRC did not disclose this notice on public ADAMS until December 11, 2013 – one month after it received the notice. Entergy also added an “s” to the corporate name: Entergy Holdings Company, LLC.

⁴⁴ *Id.*



*Entergy Nuclear Holdings Company, LLC name and legal form effective on or about December 16, 2013
 Entergy Nuclear Holding Company #3 is now a subsidiary to newly formed Entergy Nuclear Holdings Company, LLC
 (2014 SEC Form 10-K, Appendix 21)

In its further investigation NRC should assess the effect of Entergy Nuclear Holding Company’s change in legal status on Vermont Yankee’s current financial qualifications to support reactor decommissioning, spent nuclear fuel management, and site restoration. Similarly, NRC should also investigate ENO’s financial qualifications to operate and decommission the FitzPatrick or Pilgrim nuclear power plants, safely manage their spent fuel, and restore those sites.

C. Unsupported Conclusions

1. The record does not support a conclusion that Entergy Nuclear Operations is financially qualified to operate the FitzPatrick Nuclear Power Plant or Pilgrim Nuclear Power Station.

The petition asked NRC to investigate Entergy Nuclear Operation’s current financial qualifications to operate FitzPatrick’s, Pilgrim’s and Vermont Yankee’s nuclear power plants.⁴⁵ The Proposed Decision contains a passing statement that ENO has sufficient funds to operate Fitzpatrick and Pilgrim. However, the record in this proceeding does not support NRC’s conclusion that ENO is currently financially qualified to operate those plants. The record shows that on June 2, 2014, NRC sent ENO a written Request for Voluntary Response to 2.206 Petition

⁴⁵ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Petition to the U.S. Nuclear Regulatory Commission Requesting Enforcement Action Against Entergy Nuclear Operations, Inc.; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; and Entergy Generating Company (March 18, 2013) (*available at* ML13133A161).

asking five questions,⁴⁶ and that on July 24, 2014 ENO submitted a written response.⁴⁷ In its answers to NRC, Entergy Nuclear Operations provided no information about *ENO's own* financial qualifications. Instead, ENO's response directed NRC to revenue and operating cost data that *Entergy Corporation* reported to the U.S. Securities and Exchange Commission under the headings "Entergy Wholesale Commodities" and "Non-Utility Nuclear" in its SEC Form 10-K for calendar 2013 and SEC Form 10-Q for the first quarter of 2014.⁴⁸ Because Entergy Nuclear Operations did not respond to Staff's question about ENO's financial qualifications, there is no basis for the Director to reach the proposed conclusion that ENO has sufficient qualifications to operate Fitzpatrick or Pilgrim – or the other merchant facilities. Accordingly, the Director should withdraw the Proposed Decision and direct ENO to supply an accounting of ENO's own financial qualifications.

2. Entergy Corporation's Submissions to the U.S. Securities and Exchange Commission do not substantiate ENO's current financial qualifications to operate the FitzPatrick or Pilgrim nuclear power plants.

Entergy Corporation's SEC filings provide no information about ENO's finances. The irrelevance of Entergy Corporation's SEC forms to NRC's question about ENO's finances stems from the way Entergy Corporation reports its subsidiaries' financial data to the SEC. Entergy has organized the financial data from various subsidiaries into sets more or less according to the type of business the subsidiaries do. These subsidiary financial data sets have no prescribed names, but in 2013 and early 2014 Entergy Corporation used the term "business segments" for its subsidiary financial sets, and for SEC reporting purposes divided its subsidiaries into three business segments under the titles "Utility," "Entergy Wholesale Commodities," and "Parent & Other."⁴⁹ The subsidiaries whose financial data Entergy Corporation reported under the Entergy Wholesale Commodities title were diverse and included ENO and other nuclear management service subsidiaries, merchant power generators owning nuclear, fossil-fuel and wind plants, Entergy's wholesale power traders, technical services subsidiaries, and more.⁵⁰

⁴⁶ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Request for Voluntary Response to 2.206 Petition Regarding Financial Qualifications of James A FitzPatrick Nuclear Power Plant, Pilgrim Nuclear Power Plant, and Vermont Yankee Nuclear Power Plant (June 2, 2014) (*available at* ML13357A024).

⁴⁷ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Response to Request for Voluntary Response to 2.206 Petition Regarding Financial Qualifications of James A. FitzPatrick Nuclear Power Plant, Pilgrim Nuclear Power Station, and Vermont Yankee Nuclear Power Station (July 24, 2014) (*available at* ML14212A050).

⁴⁸ *Id.*, at 1.

⁴⁹ *See, e.g.*, Entergy Corporation, Form 10-K for Year Ending December 31, 2013 (*available at* <https://www.sec.gov/Archives/edgar/data/7323/000006598414000065/etr-12312013x10k.htm>); Entergy Corporation, Form 10-Q for Quarter Ending March 31, 2014 (*available at* <https://www.sec.gov/Archives/edgar/data/7323/000006598414000149/etr-03x31x2014x10q.htm>), at 1.

⁵⁰ *See, e.g., Id.*, at 1, 69, 184-198, and 236-240.

To report the financial data for a business segment Entergy combined all the data from all the subsidiaries it reported under that business segment title. For example, to report 2013 net income for Entergy Wholesale Commodities, Entergy added together the 2013 net incomes of all the subsidiaries that it chose to report under Entergy Wholesale Commodities and included this total in its 2013 10-K. Entergy Corporation reported 2013 Entergy Wholesale Commodities net income of \$43 million.⁵¹ This aggregate number for Entergy Wholesale Commodities provided no information about any specific subsidiary's 2013 net income. Entergy Wholesale Commodities' number would be the same whether ENO made \$143 million and the other subsidiaries reported under this business segment lost \$100 million, or whether the other subsidiaries made \$143 million and ENO lost \$100 million. Under either scenario, Entergy Corporation would report Entergy Wholesale Commodities' 2013 net income as \$43 million.

Because ENO operates their nuclear power plants, FitzPatrick's and Pilgrim's capacity to pay for ENO's services directly relates to ENO's financial qualifications to provide such services. However, Entergy Corporation's SEC filings provide no more information about FitzPatrick's or Pilgrim's 2013 or first quarter 2014 incomes than they do about ENO's. In each instance the figures for a specific subsidiary are hidden in the Entergy Wholesale Commodities aggregate number.

If a corporation chooses, it may designate a subset of subsidiaries and report the subset's financial data under both a set's title and a title for the subset. In the 2013 10-K, Entergy Corporation reported results for its six merchant nuclear power plant owners both under Entergy Wholesale Commodities and separately under the title "Non-Utility Nuclear."⁵² When reported under Non-Utility, Nuclear FitzPatrick's and Pilgrim's financial data was aggregated with fewer other subsidiaries but aggregated nonetheless. The 2013 figures that Entergy Corporation reported for Non-Utility Nuclear provided no more information about either licensee than the numbers for Entergy Wholesale Commodities.

As this analysis illustrates, Entergy Corporation's financial reports to the U.S. are not sufficiently detailed to allow NRC Staff to reach a conclusion on the petitioners' request. Accordingly, the Director must withdraw the Proposed Decision and direct ENO to supply an accounting of ENO's own financial qualifications.

3. The record does not substantiate the proposed conclusion that the FitzPatrick or Pilgrim facilities have the financial qualifications to operate.

As previously discussed, on July 24, 2014 ENO filed a response to NRC Staff's questions. However, not only did that response provide no information about ENO's current financial qualifications, it also did not provide sufficient information about the financial capability of the FitzPatrick or Pilgrim plants themselves. That response contained only selective information about FitzPatrick and Pilgrim and certain credit agreements. For example, the response asserted that "the financial resources available for operation of FitzPatrick or Pilgrim have not been

⁵¹ *Id.*, at 2.

⁵² *Id.*, at 236-240.

limited to the revenues, cash flow, and assets of each individual plant owner,” and that “[l]icensees have historically shown their ability to access the funds necessary for the continued safe operation of their plants from Entergy Corporation or one or more of its subsidiaries.”⁵³ However, the response did not identify any instance in which FitzPatrick or Pilgrim received any revenue, cash flow, or assets from Entergy Corporation or another subsidiary. Moreover, the response included a disclaimer that “no commitment has been made, and no commitment is being made herein.” In the face of these seemingly contradictory responses, the Director should direct Entergy Corporation to state whether or not Entergy Corporation stands behind and support Fitzpatrick and Pilgrim.

The discussion of the Fitzpatrick condenser re-tubing is also contradictory. The July 2014 response referenced the condenser re-tubing, but did not provide information about the cost of or funding for repairing this degraded component.⁵⁴

The response also contained a less-than-adequate discussion about lines of credit. The answers to NRC’s other four questions merely recited that FitzPatrick has credit agreements for \$70 million, that Pilgrim’s credit agreement is for \$50 million (Answer RFI #3), and that Vermont Yankee has credit agreements for \$95 million. However, without information about the plants’ operating costs and incomes no significance can be assigned to these figures.

Given these contradictory and incomplete statements, the Director should withdraw the Proposed Decision and direct NRC Staff to resume the investigation of the licensees financial qualifications to operate their Northeast merchant nuclear power plants and waste storage facilities.

D. New Information

1. The Federal Energy Regulatory Commission’s April 14, 2015 Order instituting an examination of a proposed subsidy to support continued operation of the Ginna Nuclear Power Plant raises questions about the profitability of the FitzPatrick Nuclear Power Plant.

There is recent evidence suggesting that FitzPatrick may be operating at a loss. On April 14, 2015 the Federal Energy Regulatory Commission issued an order in *R.E. Ginna Nuclear Power Plant*, Docket No. ER15-1047-000, instituting an inquiry into, among other questions, whether the Ginna Nuclear Power Plant is unprofitable.⁵⁵ A copy of this FERC order is attached as Appendix 1.

⁵³ *Id.*, at 2.

⁵⁴ *Id.*

⁵⁵ FERC Docket No. ER15-1047-000, *R.E. Ginna Nuclear Power Plant, LLC*, Order Rejecting in Part, and Accepting in Part and Suspending Proposed Rate Schedule, Subject to Refund, and Establishing Hearing and Settlement Procedures, 151 FERC 61,023 (April 14, 2015) (*available at* <http://elibrary.ferc.gov/idmws/search/results.asp>).

The FERC order addresses a request by Exelon Corporation, Ginna's owner, that FERC approve a wholesale power sales contract with the Rochester Electric and Gas Corporation under which in return for Exelon's promise to keep operating Ginna for three more years through 2018, RG&E would pay prices above what Ginna's electrical output would earn on the competitive market.⁵⁶ According to Exelon's own statements to FERC, Ginna accumulated losses in excess of \$150 million between 2011 and 2013, and expected to lose \$35 million in 2014.⁵⁷

The Ginna nuclear power plant is located in upstate New York about 20 miles east of Rochester and 45 miles west of the FitzPatrick nuclear power plant near Oswego. Both Ginna and FitzPatrick are single reactor facilities with no shared resources or other economies of scale. Ginna is in New York Independent System Operator Zone B,⁵⁸ and FitzPatrick is in NYISO Zone C.⁵⁹ NYISO Zones B and C are adjacent to one another.

NYISO generation data suggests that Ginna is as efficient a power producer as FitzPatrick's plant, if not more efficient. Set out below is the NYISO face plate capacity for both plants, the output of each plant in 2013 and 2014, and the output per megawatt of faceplate capacity of each plant in each year.⁶⁰

⁵⁶ *Id.* at 2-3.

⁵⁷ *Id.*, at 2 & 2, fn 6.

⁵⁸ *Id.*, at 2.

⁵⁹ New York Independent System Operator, Inc., 2015 Load & Capacity Data (April 2015) (*available at* http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2015_GoldBook_Draft.pdf), at 41.

⁶⁰ Capacity and output data are from New York Independent System Operator, Inc., 2014 Load & Capacity Data (April 2014) (*available at* http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2014_GoldBook_Final.pdf), pp. 37 & 51; and New York Independent System Operator, Inc., 2015 Load & Capacity Data (April 2015) (*available at* http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Planning_Data_and_Reference_Docs/Data_and_Reference_Docs/2015_GoldBook_Draft.pdf), pp. 41 & 55.

PLANT	CAPACITY (MEGAWATTS)	2013 OUTPUT (GWH)	2013 EFFICIENCY (H/MW)	2014 OUPUT (GWH)	2014 EFFICIENCY GWH/MW)
Ginna	614	4993.3	8.1	4973.1 ⁶¹	8.1
FitzPatrick	882	6839.8	7.8	5945.4 ⁶²	6.7

The similarity in geographic location and their common status as single reactor facilities suggest that FitzPatrick’s nuclear power plant and Ginna are under similar market and operating cost constraints, and that, like Ginna, FitzPatrick’s nuclear power plant may be operating at a loss.

2. In recent days, Entergy has withdrawn lines of credit for Vermont Yankee

On April 16, 2015, NRC approved cancellation of \$70 million of loan guarantees for Vermont Yankee that ENO earlier pointed to as evidence of Vermont Yankee’s financial qualifications for plant operation and decommissioning.⁶³ Cancellation of these loan guarantees eliminated 74% of the financial support for Vermont Yankee that ENO claimed in its sole information filing in this proceeding.⁶⁴ With respect to Vermont Yankee, the record now shows only \$25 million in support for a retired nuclear power plant that has no income and a large but undisclosed financial obligation for spent fuel management, site restoration, and other costs not supported by the plant’s nuclear decommissioning trust. This recent change renders the Proposed Decision stale and materially inaccurate. Accordingly the Director should withdraw the Proposed Decision and refer the matter back to Staff.

⁶¹ Ginna Nuclear Power Plant’s reported 2014 output has been increased by a number (716.7) equal to 23 days of the plant’s average generation in 2014. This adjustment was necessary to normalize for the production the plant lost during its 23-day refueling outage. NEI, Nuclear Performance (Dec. 2014) (*available at* http://www.nei.org/CorporateSite/media/filefolder/Publications-Brochures/Nuclear-Performance-Monthly/Nuclear_Performance_December_2014.pdf?ext=.pdf), at 2.

⁶² FitzPatrick Nuclear Power Plant’s reported 2014 output has been increased by a number (716.7) equal to 44 days of the plant’s average generation in 2014. This adjustment was necessary to normalize for the production the plant lost during its 44-day refueling outage. NEI, Nuclear Performance (Dec. 2014) (*available at* http://www.nei.org/CorporateSite/media/filefolder/Publications-Brochures/Nuclear-Performance-Monthly/Nuclear_Performance_December_2014.pdf?ext=.pdf), at 2.

⁶³ NRC Docket No. 50-271, Vermont Yankee Nuclear Power Station, Staff Evaluation by the Office of Nuclear Reactor Regulation Request for Consent to Cancel Lines of Credit (April 16, 2015) (*available at* ML15097A361).

⁶⁴ NRC Dockets 50-333, 50-271, and 50-293; Enforcement Proceeding No. 2013-0192, Proposed Director’s Decision Under 10 CFR 2.206 (March 27, 2015) (*available at* ML15040A161).

CONCLUSION

For the reasons set out above, the Director should withdraw the Proposed Decision and refer the matter to Staff with the directive to continue its investigation into the licensees' financial qualification to operate and decommission Entergy's Northeast merchant nuclear power plants.

Respectfully submitted,

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