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February 9, 2015

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

SUBJECT: Pre-Notice of Disbursement from Entergy Nuclear Vermont Yankee
Decommissioning Trust

Dear Mr. Landis-Marinello and Commissioner Recchia:

This letter responds to your January 26, 2015 letter to the Director of the Office of Nuclear Reactor Regulation ("NRR") of the U.S. Nuclear Regulatory Commission ("NRC")¹ regarding the December 30, 2014 Pre-Notice of Disbursement from Decommissioning Trust submitted to the NRC by Entergy Nuclear Vermont Yankee, LLC ("ENVY") and the Bank of New York Mellon ("Trustee").² Although your letter was addressed to the NRC and not to ENVY, we do feel compelled to respond to a number of incorrect assumptions and assertions in your letter.

1. The Disbursement Notice and Actual Disbursement Complied With All Applicable Requirements

At the outset, we want to make clear that both the disbursement notice and the actual disbursement from the ENVY decommissioning trust fund complied with all applicable NRC requirements, Vermont Yankee Nuclear Power Station ("Vermont Yankee") Renewed Facility Operating License conditions, and ENVY Master Decommissioning Trust Agreement ("Trust Agreement")³ provisions.

¹ Letter from K. Landis-Marinello and C. Recchia, State of Vermont, to W. Dean, NRC, "Docket 50-271; Entergy's Pre-Notice of Disbursement from Decommissioning Trust" (Jan. 26, 2015) ("State Letter").

² Letter from C. Wamser, ENVY, and D. Ryan, Bank of New York Mellon, to W. Dean, NRC, "Pre-Notice of Disbursement from Decommissioning Trust" (Dec. 30, 2014).

³ Entergy Nuclear Vermont Yankee, LLC Master Decommissioning Trust Agreement for Vermont Yankee Nuclear Power Station (July 31, 2002).

As an initial matter, the December 30 disbursement notice meets all applicable regulatory requirements and is consistent in form and content with similar pre-disbursement notices that other decommissioning sites have submitted to the NRC. Pursuant to Section 4.05 of the Trust Agreement, no payments from the trust (other than for ordinary administrative expenses) may be made until the Trustee has first given the NRC 30 days' prior written notice of payment. The Trustee is also prohibited from making any disbursements from the fund if the NRR Director notifies the Trustee in writing of his or her objection to payment. ENVY and the Trustee submitted a notice of disbursement for up to \$18 million in decommissioning planning costs on December 30, 2014. In accordance with Section 4.05 of the Trust Agreement, the Trustee made no payments to ENVY during the 30-day period following the submittal of the disbursement notice. That 30-day period ended on January 29, 2015, and neither ENVY nor the Trustee received any notice of objection from the NRR Director.

Consequently, and as permitted by the Trust Agreement, on February 4, 2015, the Trustee disbursed \$12,143,197.21 from the ENVY qualified decommissioning trust fund account and \$32,915.54 from the non-qualified decommissioning trust fund account.⁴ This initial payment was for decommissioning planning costs ENVY incurred from the time of the plant shutdown announcement in August 2013 through December 2014. Of the approximately \$12 million incurred planning costs, \$282,300.27 were related to operational spent fuel management planning activities.⁵

2. NRC Regulations and the Trust Agreement Permit ENVY to Recover Spent Fuel Management Planning Costs

Contrary to your assertions that NRC regulations prohibit ENVY from using decommissioning trust funds for spent fuel management costs,⁶ NRC regulations and guidance permit ENVY to recover costs associated with planning costs for both license termination and spent fuel management activities. Under NRC regulations at 10 C.F.R. § 50.82(a)(8)(ii), licensees may use up to 3 percent of the generic decommissioning funding amount specified in Section 50.75 for "decommissioning planning." The NRC staff "recognizes that during planning for decommissioning, it is necessary to consider activities leading to license termination and *the storage of spent fuel*; therefore, the staff's interpretation of the appropriate use of these planning funds will permit planning for *all issues related to the decommissioning of the facility*."⁷ Accordingly, it is entirely appropriate and permissible for ENVY to recover spent fuel management planning costs from the trust fund.

⁴ With this \$32,915.54 withdrawal from the non-qualified account, ENVY has exhausted the funds in this account and is, therefore, closing the non-qualified sub-account.

⁵ In addition to the approximately \$280,000 in operational spent fuel management planning costs, ENVY has also incurred costs for dry storage planning activities. Although ENVY is permitted by NRC regulations and the Trust Agreement to recover these dry storage planning costs from the trust, and reserves all rights to do so, ENVY currently does not intend to seek reimbursement for such costs from the trust fund.

⁶ State Letter at 2.

⁷ NRC Regulatory Guide 1.184, Decommissioning of Nuclear Power Reactors, Rev. 1 at 6 (Oct. 2013) (emphasis added) ("Reg. Guide 1.184").

The Trust Agreement likewise permits ENVY to recover spent fuel management planning costs from the trust. Section 4.01 of the Trust Agreement states that “the Trustee shall make payments out of the Funds ... for purposes of paying costs, liabilities and expenses of Decommissioning.” “Decommissioning” is defined in Section 1.01(j) of the Trust Agreement to mean “the removal of the Station from service and disposal of its components in accordance with Applicable Law.” The Trust Agreement further defines the decommissioning process to include “pre-shutdown activities related to the removal and disposal of the Station, including ... planning ... and non-DOE spent fuel storage.”⁸ The Trust Agreement, therefore, expressly allows the Trustee to make payments to ENVY for incurred costs related to pre-shutdown spent fuel storage planning activities. Moreover, as noted above, the NRC staff interprets its own regulations (i.e., the “Applicable Law”) to allow licensees to recover spent fuel management planning costs from their decommissioning trust funds.⁹ Therefore, ENVY’s initial request to recover decommissioning planning costs, of which a very small portion is related to spent fuel management planning costs, is clearly permitted by the Trust Agreement’s plain language.

Although your letter raises a number of other issues that are not directly relevant to ENVY’s initial disbursement request, several of the statements made in your letter do warrant a response here.

3. The Trust Agreement Does Not Preclude the Use of Trust Funds for Spent Fuel Management Activities Before Radiological Decommissioning Activities Are Complete

We disagree with your assertion that the Trust Agreement requires the Trustee “to refrain from disbursing funds for anything other than radiological decontamination and decommissioning until those activities are complete.”¹⁰ To the contrary, the Trust Agreement authorizes disbursements for incurred spent fuel management costs before radiological decontamination is completed.¹¹ In particular, Section 4.01 of the Trust Agreement provides that, “[o]nce Decommissioning is completed, the Trustee shall also disburse amounts in the Funds in a manner designated in any Decommissioning Certificate for the purposes of paying costs, liabilities and expenses of Docket 6545 Decommissioning Activities, *Spent Fuel Costs* and *Site Restoration Costs (each to the extent not included in Decommissioning)*.”¹² By authorizing payment for spent fuel costs “to the extent not included in Decommissioning,” the Trust Agreement explicitly recognizes that spent fuel management costs will be paid from the trust during “Decommissioning,” as that term is defined in Section 1.01(j). Moreover, Section 4.06 of the Trust Agreement expressly confirms that disbursements are permitted under Section 4.01 for “Decommissioning costs *including costs for decommissioning, spent fuel storage and site restoration.*”¹³

⁸ Trust Agreement § 1.01(j).

⁹ See Reg. Guide 1.184 at 6.

¹⁰ State Letter at 4.

¹¹ ENVY acknowledges that current NRC regulations do not permit ENVY to use decommissioning trust funds for actual (i.e., non-planning) spent fuel management activities. As the State is aware, ENVY has requested an exemption from this restriction, which is pending before the NRC. See Letter from C. Wamser, Entergy, to NRC, “Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)” (Jan. 6, 2015).

¹² Trust Agreement § 4.01 (emphasis added).

¹³ *Id.* § 4.06 (emphasis added).

These sections in the Trust Agreement, which specifically provide that "Decommissioning" costs include spent fuel costs, also refute the assertion in your letter that trust funds cannot be disbursed for spent fuel costs until radiological decommissioning has been completed. Although your letter cites to Exhibit D of the Trust Agreement as support for your assertion, that citation is misplaced.¹⁴ Exhibit D only defines the "Completion of Decommissioning" for purposes of termination of the Trust under Section 5.01. Exhibit D does not define "Decommissioning" or remove spent fuel costs from "Decommissioning," as that term is used in Sections 1.01(j), 4.01 and 4.06 of the Trust Agreement.¹⁵ Exhibit D states, "The Completion of Decommissioning is defined for purposes of this Exhibit D as plant dismantlement and decontamination to NRC standards plus the completion of additional activities agreed to or imposed in the course of Docket No. 6545 before the Vermont Public Service Commission or pursuant to any subsequent law or proceeding, but excluding spent fuel management and any site restoration."¹⁶ Exhibit D excludes spent fuel management from the "Completion of Decommissioning" because the distribution of any excess trust funds would otherwise be delayed until the U.S. Department of Energy ("DOE") had removed all the spent fuel from the site, which could be decades after ENVY completes the radiological decommissioning of the remainder of the site.

4. The Trust Agreement Does Not Preclude Reimbursement of Spent Fuel Management Costs that ENVY Will Seek to Recover from the Department of Energy

Your letter also posits that the trust fund "can only be used to cover expenses that the U.S. Department of Energy (DOE) does not have to pay," citing to the definition of "Decommissioning" and Exhibit D.¹⁷ Section 1.01(j) defines the decommissioning process to include "pre-shutdown activities related to non-DOE spent fuel storage."¹⁸ In this context of "pre-shutdown" (*i.e.*, operating) activities, "non-DOE spent fuel storage" clearly refers to on-site spent fuel storage as distinguished from the 1.0 mil per kWh of generation fee that all operating nuclear generating facilities, including the Vermont Yankee plant, paid to the Nuclear Waste Fund for spent fuel storage by DOE. The "non-DOE" reference in Section 1.01(j) thus does not conflict with, or in any way override, Section 4.01's authorization to disburse trust funds for spent fuel costs as a part of "Decommissioning." Exhibit D again only defines the "Completion of Decommissioning" and not the authority to disburse funds from the trust which is provided by Section 4.01. Exhibit D merely specifies *when* any excess trust funds shall be distributed and logically includes settlement or other resolution of Vermont Yankee's spent fuel cost claims against DOE as events triggering such distribution.

¹⁴ State Letter at 5.

¹⁵ See Trust Agreement, Exh. D.

¹⁶ *Id.*, Exh. D. at Exh. D-1 (emphasis in original). Exhibit D further provides that "Completion of Decommissioning shall be deemed to have occurred for purposes hereof notwithstanding that the Company [(ENVY)] may choose to re-use the Site, and portions of existing structures, systems and components, and that spent fuel is not removed from the Site."

¹⁷ State Letter at 5.

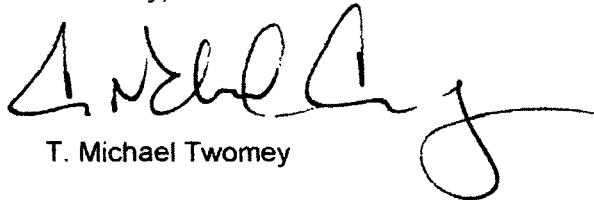
¹⁸ Trust Agreement § 1.01(j).

Lastly, your letter also makes a number of statements regarding the Vermont ratepayers' interest in any remaining decommissioning trust funds.¹⁹ Your letter fails to recognize, however, that the trust funds were collected by Vermont Yankee Nuclear Power Corporation through wholesale power contracts "with each of its sponsoring utilities which obligate[d] such utilities to purchase the output and capacity of the Vermont Yankee plant and to pay therefor 100% of Vermont Yankee's costs, including decommissioning" and that "[t]hese contracts ... have been approved as rates by the FERC."²⁰ As such, FERC has authority to determine the disposition of any excess trust funds.²¹

ENVY is committed to completing the decommissioning of Vermont Yankee safely. We are equally committed to using and managing ENVY decommissioning trust funds responsibly, in accordance with the Trust Agreement and all applicable NRC requirements.

Please contact me with any questions. With kind regards, I am

Sincerely,



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¹⁹ State Letter at 3-4.

²⁰ Vermont Yankee Nuclear Power Corporation Biennial Decommissioning Fund Status Report, submitted to the NRC March 28, 2001 (NRC Accession # ML 010930102) at 2.

²¹ See 18 C.F.R. § 35.32(a)(7).