

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee, LLC )  
and Entergy Nuclear Operations, Inc. for a Certificate )  
of Public Good, pursuant to 30 V.S.A. § 248 and )  
10 V.S.A. § 6522 to construct a Second Independent )  
Spent Fuel Storage Installation at the Vermont Yankee )  
Nuclear Power Station )

Docket No. 8300

PREFILED TESTIMONY OF  
CHRISTOPHER RECCHIA

ON BEHALF OF THE  
VERMONT DEPARTMENT OF PUBLIC SERVICE

August 19, 2015

Summary: Commissioner Recchia's testimony presents the Department's overall position regarding this petition and discusses the sufficiency of Entergy VY's financial assurance related to spent fuel management.

Prefiled Testimony  
of  
Christopher Recchia

1 Q. Please state your name and occupation.

2 A. My name is Christopher Recchia and I am the Commissioner of the Vermont  
3 Public Service Department ("Department" or "DPS"). My business address is 112 State  
4 Street, Montpelier, Vermont.  
5

6 Q. Please describe your educational background and experience.

7 A. I have a bachelor's degree in zoology from the University of Vermont, and  
8 master's degrees in Environmental Law from Vermont Law School and Natural Resource  
9 Policy and Management from Yale University. I served as Deputy and then  
10 Commissioner of the Vermont Department of Environmental Conservation from 1997  
11 through 2003; as Executive Director of the Ozone Transport Commission from 2003  
12 through 2007; as Executive Director of the Biomass Energy Resource Center from 2007  
13 through 2011; and as Deputy Secretary for the Vermont Agency of Natural Resources  
14 ("ANR") from January 2011 through January 2013. I was appointed to my current  
15 position by Governor Peter Shumlin in January 2013.  
16

17 Q. Have you testified before the Vermont Public Service Board before?

18 A. Yes, in Dockets 7862, 8190/8191, and 8328.  
19

20 Q. What is the purpose of your testimony?

21 A. My testimony presents the Department's overall position regarding this petition  
22 and addresses the issue of adequate financial assurance related to management of spent  
23 nuclear fuel.  
24

1 Q. Do you think that this Project is in the general good of the state?

2 A. In general, yes. I believe that it is in the economic interest of Vermonters to have  
3 the spent nuclear fuel removed from the spent fuel pool and transferred to dry cask  
4 storage as soon as possible. The State has an interest in seeing the site greenfielded and  
5 returned to productive economic use after appropriate decommissioning overseen by the  
6 Nuclear Regulatory Commission (NRC). Although management of spent nuclear fuel is  
7 not considered to be part of the decommissioning process, decommissioning of the spent  
8 fuel pool cannot be completed without moving the spent nuclear fuel into dry cask  
9 storage. As part of the federal process, the Department would like to see the removal of  
10 spent nuclear fuel from Vermont and into long-term storage, as promised by the U.S.  
11 Department of Energy (DOE). In the interim, the Department believes that the common-  
12 sense approach of transferring spent nuclear fuel to dry cask storage is cost effective and  
13 provides Entergy the option, consistent with NRC regulations, to decommission and  
14 greenfield the site sooner, to the economic benefit of Vermonters.

15  
16 Q. Is there sufficient information for the PSB to find that, pursuant to 10 V.S.A. §  
17 6522(b)(1), "adequate financial assurance exists for the management of spent fuel at  
18 Vermont Yankee for a time period reasonably expected to be necessary, including  
19 through decommissioning, and for as long as it is located in the state?"

20 A. Although the Department does not believe that the financial assurance cited by  
21 Entergy Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively  
22 "Entergy VY") in its revised testimony meets this criterion, the Department does believe  
23 that there is sufficient information to find that this criterion has been met, as explained  
24 below.

25  
26 Q. Please review Entergy VY's explanation for why there is adequate financial assurance.

27 A. According to Mr. Twomey's prefiled testimony and information Entergy VY has  
28 filed with the NRC and submitted in this Docket as exhibit EN-TMT-6, the total cost of

1 managing spent nuclear fuel until it is removed from the Vermont Yankee site is expected  
2 to be \$368 million. Mr. Twomey's prefiled testimony sets out two different categories  
3 of actions that encompass spent nuclear fuel management for the site. First, Entergy is  
4 proposing to use \$145 million in credit facilities, backed by Entergy Corporation, to pay  
5 for construction of the Independent Spent Fuel Storage Installation (ISFSI) pad and  
6 transfer of spent nuclear fuel from the pool to dry cask storage. Second, Entergy VY is  
7 proposing to use money from the decommissioning trust fund to pay for ongoing  
8 maintenance of the dry casks. Additionally, Entergy VY has stated that it intends to seek  
9 monies from the Department of Energy for breach of contract and use this money to  
10 reimburse Entergy VY and the decommissioning trust fund for spent nuclear fuel  
11 management.  
12

13 Q. Please explain any deficiencies with Entergy VY's proposed financial assurance.

14 A. Entergy VY is relying on the use of the decommissioning trust fund to provide  
15 financial assurance for spent fuel management, which requires, among other things, an  
16 exemption from NRC regulations. The NRC Staff has granted Entergy VY's request for  
17 such an exemption. The State of Vermont, through the Attorney General's Office and the  
18 Department of Public Service, and joined by Green Mountain Power Corporation and the  
19 Vermont Yankee Nuclear Power Corporation, has challenged the exemption for such use  
20 of the decommissioning trust fund through a petition filed in the D.C. Circuit Court of  
21 Appeals (see exhibit CR-1 – Petition for Review). In addition, the State has formally  
22 asked the NRC to object to an Entergy VY request to the Trustee providing monies for  
23 spent nuclear fuel management (see exhibit CR-2 – Letter to NRC re Fund). As there is  
24 ongoing litigation around the use of the decommissioning trust fund for spent nuclear fuel  
25 management, and because the use of the fund for this purpose is expressly contrary to  
26 NRC regulations and other federal and state laws, it is inappropriate for Entergy VY to  
27 use this funding source as the basis for demonstrating adequate financial assurance.  
28

1 Q. Please explain why there is adequate financial assurance for management of spent nuclear  
2 waste.

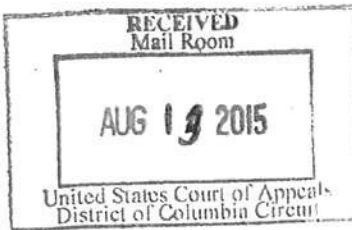
3 A. There are legal aspects to this question that I will leave for the DPS attorneys;  
4 however, in my opinion, the Board appears to have a significant amount of discretion in  
5 determining constitutes “adequate” and what is an “assurance.” Entergy VY has  
6 provided \$145 million in credit facilities for the work related to constructing the ISFSI  
7 pad and transferring the spent nuclear fuel from the spent fuel pool to dry cask storage,  
8 which is what this CPG is for. In addition, the Department of Energy has reimbursed  
9 Entergy VY for work related to spent fuel management. I anticipate that the  
10 Department’s lawyers will brief why DOE reimbursement should be considered in  
11 determining that there is adequate financial assurance to meet this criterion. Also, NRC  
12 regulations (10 C.F.R. § 50.54(bb)) require financial assurance for spent fuel  
13 management. Consequently, assuming the State prevails in its arguments for not  
14 allowing Entergy to use the decommissioning trust fund for spent nuclear fuel  
15 management, the NRC will require Entergy to provide a separate form of financial  
16 assurance. The Department’s brief will provide further context on the litigation  
17 surrounding the use of the decommissioning fund and any preemption issues that might  
18 arise from Section 6522(b) generally.

19 Finally, in my view, the Board must evaluate what is “adequate” in light of  
20 reasonable alternatives. In this case, the alternative is for Entergy VY to keep the spent  
21 nuclear fuel in the pool. This is not a cost-free proposition. In fact, my understanding is  
22 that it would be *more costly* to continue to store the fuel in the spent fuel pool. It  
23 therefore makes little sense to demand a greater degree of financial assurance for dry-  
24 cask spent fuel management (a desirable outcome) than for wet spent fuel management (a  
25 less desirable outcome). Entergy VY has provided \$145 million in credit facilities for the  
26 work related to constructing the ISFSI pad and transferring the spent nuclear fuel from  
27 the spent fuel pool to dry cask storage. In my view, this provides adequate financial  
28 assurance for the transfer from wet to dry storage. After that, the ongoing spent fuel

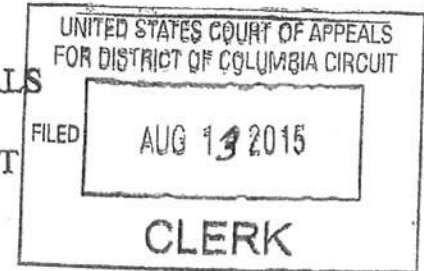
1 management costs are likely to be less expensive than the status quo. In light of this  
2 reality, the \$145 credit facilities are adequate.

3  
4 Q. Does this conclude your testimony?

5 A. Yes.

**ORIGINAL**

UNITED STATES COURT OF APPEALS  
FOR THE  
DISTRICT OF COLUMBIA CIRCUIT



THE STATE OF VERMONT,  
VERMONT YANKEE NUCLEAR  
POWER CORPORATION; and  
GREEN MOUNTAIN POWER  
CORPORATION

Petitioners

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents

No. 15-1279

**PETITION FOR REVIEW**

Pursuant to § 189 of the Atomic Energy Act, 42 U.S.C. § 2239, 28 U.S.C. §§ 2341-2344; the Administrative Procedure Act, 5 U.S.C. § 551 et seq.; and Rule 15 of the Federal Rules of Appellate Procedure, the petitioners, the State of Vermont, the Vermont Yankee Nuclear Power Corporation, and Green Mountain Power ("Petitioners") hereby petition this Court for review of the United States Nuclear Regulatory Commission's ("Commission") Issuance of Exemptions for the Vermont Yankee Nuclear Power Station ("Vermont Yankee") in Docket No. 50-271; NRC-2015-0157.

The Commission issued its approval to the owner/operator of Vermont Yankee, Entergy Nuclear Operations, Inc. ("Entergy"), via letter dated June 17, 2015, and notice was published in the Federal Register on June 23, 2015 (80 Fed. Reg. 35992; a copy of which is attached hereto). This filing is within the 60-day statute of limitations and is timely pursuant to 28 U.S.C. § 2344. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 2342(4) and 2344, and is a proper venue pursuant to 28 U.S.C. § 2343.

Petitioners have standing pursuant to 28 U.S.C. § 2344 and 5 U.S.C. § 702 to bring this Petition. The State of Vermont, its citizens, and its ratepayers are aggrieved by the Commission's decision, which affects: (1) the license for a nuclear power plant located in the State, and (2) the Nuclear Decommissioning Trust Fund ("Decommissioning Fund") for Vermont Yankee, which was primarily funded by monies collected from Vermont ratepayers, and in which Vermont ratepayers have an interest in excess funds remaining after decommissioning. The Vermont Yankee Nuclear Power Corporation and its current sole owner, Green Mountain Power Corporation, are utilities that also have a direct interest in proper use of the Decommissioning Fund. Vermont Yankee Nuclear Power Corporation, now owned by Green Mountain Power Corporation, collected the principal funds that (with interest) constitute the entirety of the Decommissioning Fund. Further, Green Mountain Power Corporation, and through it their Vermont ratepayers, have



a 55% interest in all monies that remain in that fund following completion of decommissioning. Thus, every time the Commission allows an improper withdrawal from the Decommissioning Fund, it harms Vermont Yankee Nuclear Power Corporation, Green Mountain Power Corporation, and their Vermont ratepayers. Finally, Petitioners jointly submitted a letter (dated June 5, 2015) to the Commission requesting the opportunity for public participation on Entergy's exemption request and requesting to participate in the matter before the Commission issued its decision. No such opportunity was granted.

The Commission acted arbitrarily, abused its discretion, and violated the Atomic Energy Act, the Administrative Procedure Act, and the National Environmental Policy Act in approving the exemptions and failing to provide an opportunity for Petitioners to participate in the process. Petitioners respectfully request that this Court review the Commission's decision, vacate that decision, and remand the matter to the Commission.


Dated: August 13, 2015

Respectfully submitted,


THE STATE OF VERMONT

By its attorneys,

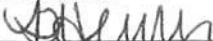
WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:   
Kyle H. Landis-Marinello,  
D.C. Circuit Bar Roll No. 55684  
Assistant Attorney General  
State of Vermont  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
kyle.landis-marinello@vermont.gov  
Tel: (802) 828-3186

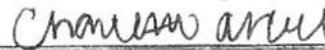
GEOFFREY COMMONS  
PUBLIC ADVOCATE

By:   
Edward McNamara  
Regional Policy Director  
State of Vermont  
Department of Public Service  
112 State Street, Third Floor  
Montpelier, VT 05620-2601  
ed.mcnamara@state.vt.us  
Tel: (802) 828-4007

Of counsel:

  
Robert C. Kirsch,  
D.C. Circuit Bar Roll No. 50119  
Felicia H. Ellsworth,  
*application for admission pending*  
Bonnie L. Heiple,  
*application for admission pending*  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
robert.kirsch@wilmerhale.com  
felicia.ellsworth@wilmerhale.com  
bonnie.heiple@wilmerhale.com  
Tel: (617) 526-6000

## GREEN MOUNTAIN POWER CORPORATION



Charlotte B. Ancel

Vice President, General Counsel

Power Resources, and Corporate Secretary

163 Acorn Lane


Colchester, VT 05446

Charlotte.Ancel@greenmountainpower.com

Tel: (802) 655-8764

VERMONT YANKEE NUCLEAR POWER  
CORPORATION

By its attorney



Peter H. Zamore

Sheehey Furlong &amp; Behm P. C.

30 Main Street, Gateway Sq, 6th Fl

P.O. Box 66

Burlington, VT 05402

pzamore@sheeheyvt.com

Tel: (802) 864-9891

UNITED STATES COURT OF APPEALS  
FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

THE STATE OF VERMONT,  
VERMONT YANKEE NUCLEAR  
POWER CORPORATION; and  
GREEN MOUNTAIN POWER  
CORPORATION

Petitioners

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSION, and  
UNITED STATES OF AMERICA,

Respondents

No. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 13th day of August 2015 served a copy of the foregoing Petition for Review by first-class mail, postage prepaid, on the following individuals at the following addresses:

Office of the Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

James Kim, Project Manager  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission,  
Washington, DC 20555-0001

A. Louise Lund  
Division of Operating Reactor Licensing,  
Office of Nuclear Reactor Regulation  
Washington, DC 20555-0001

Anne Boland  
Division of Operating Reactor Licensing,  
Office of Nuclear Reactor Regulation  
Washington, DC 20555-0001

Office of Commission  
Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Office of the Secretary  
ATTN: Rulemakings & Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Andrew Averbach  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Trip Rothschild  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Marian Zobler  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Catherine Scott  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Edward Williamson  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Site Vice President  
Entergy Nuclear Operations, Inc.  
Vermont Yankee Nuclear Power Station  
P.O. Box 250  
Governor Hunt Road  
Vernon, VT 05354

  
\_\_\_\_\_  
Bonnie L. Heiple

WILLIAM H. SORRELL  
ATTORNEY GENERAL

SUSANNE R. YOUNG  
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN  
CHIEF ASST. ATTORNEY  
GENERAL



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

TEL: (802) 828-3171  
FAX: (802) 828-3187  
TTY: (802) 828-3665

<http://www.ago.vermont.gov>

August 13, 2015

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

Re: Docket 50-271; Request for Immediate Objection to Entergy's July 16, 2015 Pre-Notice of Disbursement from Decommissioning Trust *for Non-Decommissioning Expenses*

Dear Director Dean,

On July 16, 2015, Entergy Nuclear Vermont Yankee, LLC (Entergy) and the Managing Director of the Bank of New York Mellon (the Bank) submitted a "Pre-Notice of Disbursement from Decommissioning Trust." The notice requests "up to \$12,000,000" from the Nuclear Decommissioning Trust Fund for expenses that include "operational irradiated fuel management expenses." The State, the Vermont Yankee Nuclear Power Corporation, and Green Mountain Power Corporation formally request that the NRC immediately provide "written notice of objection" to the Bank of New York Mellon concerning the pending request, pursuant to the NRC's authority under Vermont Yankee Nuclear Power Station Renewed Facility Operating License Condition 3.J.a(iii) and under the Master Trust Agreement § 4.05.

All of Entergy's previous pre-notices of disbursements have been only for what Entergy asserts to be "legitimate decommissioning expenses." This is the first time Entergy has asserted a right to reimburse itself for *non-decommissioning* expenses—something which NRC regulations explicitly forbid. 10 C.F.R. § 50.75(h)(1)(iv) (disbursements "are restricted to decommissioning expenses"); *see also, e.g., id.* § 50.82(a)(8)(i)(A) (disbursements must be "for legitimate decommissioning activities consistent with the definition of decommissioning in [10 C.F.R.] § 50.2," which in turn defines decommissioning as limited to activities that "reduce residual radioactivity"); *General Requirements for Decommissioning Nuclear Facilities*, 53 Fed. Reg. 24018-01, 24018 (1988) ("Decommissioning activities *do not include the removal and disposal of spent fuel* which is considered to be an operational activity . . . ." (emphasis added)).

Entergy's assertion of an ability to reimburse itself for millions of dollars in "operational irradiated fuel management expenses" appears to be based on the NRC's June 23, 2015 granting of an exemption from the above regulations. *See* 80 Fed. Reg. 35992-35995 (June 23, 2015). However, the State of Vermont, the Vermont Yankee Nuclear Power Corporation, and Green Mountain Power have now challenged that decision in the U.S. Court of Appeals for the D.C. Circuit. *See attachment.* This pending

legal challenge states that the NRC's June 23, 2015 decision should be overturned as a violation of the Atomic Energy Act, the Administrative Procedures Act, and the National Environmental Policy Act.


Further, as the State has previously noted, regardless of whether Entergy has been exempted from applicable NRC regulations, Entergy and the Bank of New York Mellon have independent legal obligations to *not* release funds for "operational irradiated fuel management expenses." In particular, the 2002 Master Trust Agreement and the related Vermont Public Service Board Order do not allow use of the Nuclear Decommissioning Trust Fund for spent fuel expenses until the site has been decommissioned, and have specific provisions regarding the return of 55% of excess amounts in that fund to Vermont ratepayers through the Vermont Yankee Nuclear Power Corporation and Green Mountain Power. Entergy has not yet sought approval from the NRC or the Vermont Public Service Board to amend those requirements.

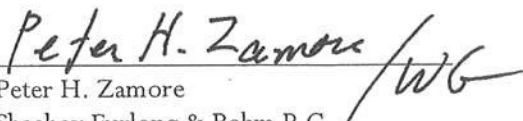
Applicable Federal Energy Regulatory Commission (FERC) regulations similarly state that "[a]bsent express authorization" from FERC—authorization Entergy has not received—"no part" of the Nuclear Decommissioning Trust Fund may be "used for, or diverted to, any purpose *other than to fund the costs of decommissioning*." 18 C.F.R. § 35.32(a)(6) (emphasis added). Entergy's planned use of alleged "excess" funds also violates the requirement that any "excess jurisdictional amount" be "return[ed] . . . to ratepayers"—here, through Vermont Yankee Nuclear Power Corporation and Green Mountain Power. *Id.* § 35.32(a)(7).

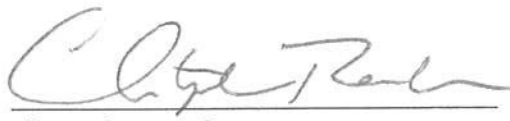
Entergy's contractual obligations as well as federal laws, including laws Entergy has not been exempted from, prohibit the release of trust funds for "operational irradiated fuel management expenses" at this time. And the undersigned have now filed a direct challenge in the U.S. Court of Appeals for the D.C. Circuit to the exemption request that forms the entire basis for Entergy's claim that it can use the fund in this way. Unless and until these legal issues are resolved, it would be arbitrary and an abuse of discretion for the NRC to stand by and decline to exercise its right to provide "written notice of objection" to the Bank of New York Mellon concerning the pending request.

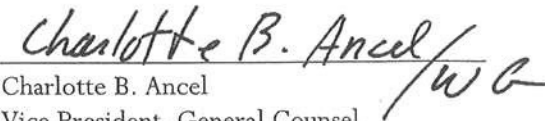
Thank you for your attention to this matter, and we look forward to your immediate action.

Sincerely,

  
William E. Griffin  
Chief Assistant Attorney General  
Vermont Attorney General's Office

  
Peter H. Zamore  
Sheehy Furlong & Behm P.C.  
30 Main Street, Gateway Sq, 6th Fl, PO Box 66  
Burlington, VT 05402  
Counsel for Vermont Yankee Nuclear Power Corporation  
and Green Mountain Power

  
Christopher Recchia  
Commissioner  
Vermont Department of Public Service

  
Charlotte B. Ancel  
Vice President, General Counsel  
Power Resources, and Corporate Secretary  
Green Mountain Power Corporation  
163 Acorn Ln, Colchester, VT 05446

cc: Annette L. Vietti-Cook, Secretary of the Nuclear Regulatory Commission  
U.S. Nuclear Regulatory Commission Document Control Desk



Daniel H. Dorman, Regional Administrator, Region 1, NRC  
James S. Kim, Project Manager, Division of Operating Reactor Licensing, NRC  
T. Michael Twomey, Vice President of External Affairs, Entergy Nuclear Vermont Yankee, LLC  
Chris Wamser, Site Vice President, Entergy Nuclear Vermont Yankee, LLC  
Glen Metzger, The Bank of New York Mellon

