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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).

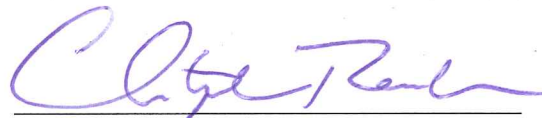
Entergy's contractual obligations as well as federal laws, including laws Entergy has not been exempted from, prohibit the release of trust funds for "operational irradiated fuel management expenses" at this time. And the undersigned have now filed a direct challenge in the U.S. Court of Appeals for 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.

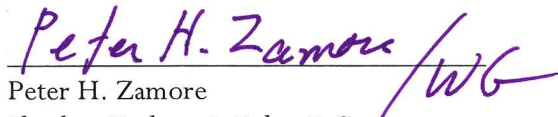
Sincerely,



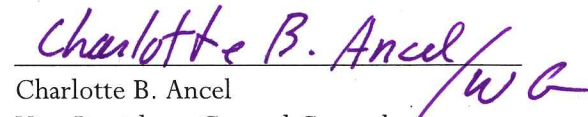
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cc: Annette L. Vietti-Cook, Secretary of the Nuclear Regulatory Commission
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