

Jaegers, Cathy

To: Leeds, NRR
Ref. G20130211

From: Paul Gunter <paul@beyondnuclear.org>
Sent: Monday, April 22, 2013 12:04 PM
To: Guzman, Richard; Borchardt, Bill
Subject: Emergency Enforcement Petition for Entergy Nuclear on lack of financial qualification

Due: 4/23/13

cy: Merzke,
0800

Beyond Nuclear signs on as a co-petitioner in the following matter concerning Entergy's Vermont Yankee and FitzPatrick nuclear power plant.

Thank you,
Paul Gunter

Mr. James Borchardt
Executive Director of Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Borchardt:

I wish to join the petition submitted by Alliance for a Green Economy, Citizens Awareness Network, Pilgrim Watch, and Vermont Citizens Action Network for emergency enforcement action against Entergy Nuclear Operations, Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Vermont Yankee, LLC, and Entergy Generation Co. The petition calls for the Nuclear Regulatory Commission (NRC) to suspend licenses for the James A. FitzPatrick Nuclear Power Plant and the Vermont Yankee Nuclear Power Station. The petition also requests NRC begin an investigation to determine whether the operating license for the Pilgrim Nuclear Power Station must also be suspended.

Entergy is operating FitzPatrick and Vermont Yankee in violation of the terms and conditions of the licenses. Specifically, Entergy no longer meets the financial qualifications requirements to possess the licenses and operate FitzPatrick and Vermont Yankee. Entergy may no longer meet the same licensing requirements for Pilgrim. These regulations require that licensees demonstrate they are financially qualified, in order to ensure they can afford to operate and maintain reactors safely.

In January and February 2013, UBS Investment Research (UBS) issued consecutive reports enumerating strong concerns about the performance of Entergy's merchant nuclear business. In particular, UBS names two Entergy reactors that are unable to generate sufficient revenue to meet their operating costs: FitzPatrick and Vermont Yankee. In the February report, UBS also notes that Pilgrim is at risk of falling into this category. UBS projects that, unless Entergy closes FitzPatrick and/or Vermont Yankee, Entergy will have to operate them at a loss through at least 2016.

If UBS is correct that FitzPatrick and VY have been operating at a net loss, and will continue to do for at least the next four years, then Entergy is no longer financially qualified to operate the reactors under the licenses and the terms of their transfers. An investigation of Pilgrim under 10 CFR 50.33(f)(5) is necessary to determine whether the same is true of the Pilgrim licensees.

FitzPatrick is experiencing performance problems that affect the plant's ability to generate revenue reliably. In February 2013, NRC placed FitzPatrick under Increased Regulatory Response for the Unplanned Power Changes (UPC) performance indicator. NRC tracks UPC under the Initiating Events Cornerstone under its

Reactor Oversight Process, because they “upset plant stability and challenge critical safety functions,” making it more likely that an accident could occur. With an average of 6.4 UPC per 7,000 hours of operation, FitzPatrick has had eight times the industry average number of these initiating events.

As part of its investigation of FitzPatrick’s financial qualifications, NRC should determine whether these plant reliability problems are connected to economic pressures on Entergy to reduce operating and maintenance costs and outage time. For instance, the frequency of Unplanned Power Changes caused by problems with the main condenser makes it appear that Entergy is tolerating a high rate of initiating events in order to defer maintenance on, or replacement of, a major piece of equipment.

There has also been a surprisingly large number of emergencies, plant shutdowns, and equipment failures at Pilgrim in recent months, as documented in daily event reports since January 1, 2013. This recent performance trend should also be reviewed with respect to Entergy’s financial qualifications, as part of the 10 CFR 50.33(f)(5) investigation.

In addition to the main condenser at FitzPatrick, Entergy may be forced to incur other large costs for plant maintenance and upgrades. FitzPatrick is unique among reactors of its type in never having installed a so-called “hardened vent” (containment bypass system) to address known deficiencies in the design of its containment system. FitzPatrick will need to complete upgrades to the containment bypass system and other post-Fukushima requirements before the end of 2016 – during the same period in which UBS anticipates Entergy will not be able to operate FitzPatrick profitably. NRC’s post-Fukushima safety review may yet require other investments in maintenance and upgrades.

Vermont Yankee is also known to require replacement of the main condenser sometime before 2016, at an estimated cost of \$150 million and requiring substantial outage time. In addition, the policy environment affecting VY’s operating costs involve substantial uncertainty, with policymakers considering several measures that could create significant new expenses: fees or penalties for thermal discharges into the Connecticut River, levies on spent fuel storage, and/or prepayment for post-closure spent fuel storage and site remediation. Both VY and Pilgrim, like FitzPatrick, are Mark I boiling water reactors and will have to complete a number post-Fukushima upgrades within the 2013-2016 period and beyond.

Entergy’s financial qualifications and the impact of maintenance costs and outage time are not of concern because of their impact on Entergy’s profitability, stock price, or bond rating. Rather, they are relevant because of their impact on nuclear plant safety and the decisions Entergy makes about how it operates and maintains FitzPatrick, Vermont Yankee, and Pilgrim while minimizing its financial losses. Entergy may, as UBS anticipates, decide to retire one or more of the plants in 2013 and defer making major investments such as replacing the condensers – in essence, deciding to tolerate problems that contribute to more Unplanned Power Changes and Initiating Events, and compromising mitigating systems and other safety cornerstones.

The licensees must not be allowed to endanger the public health and safety as a result of the fact that Entergy is not financially qualified to operate Vermont Yankee and FitzPatrick, and possibly Pilgrim, per 10 CFR 50.33(f)(2). NRC must therefore suspend the FitzPatrick and VY licenses to prevent further violations, per 10 CFR 110(a)(3), and investigate Entergy’s financial qualifications to continue operating Pilgrim, per 10 CFR 50.33(f)(5).

I understand that my name may be made public in connection with this petition and I designate CAN's Tim Judson as my point of contact.

Sincerely,

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Paul Gunter, Director
Reactor Oversight Project
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