

# **Official Transcript of Proceedings**

## **NUCLEAR REGULATORY COMMISSION**

Title: 10 CFR 2.206 Petition Review Board  
RE Entergy Nuclear Operations

Docket Number: (n/a)

Location: (teleconference)

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Pages 1-76

Edited by Richard Guzman, NRC Petition Manager

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE

ENTERGY NUCLEAR OPERATIONS, INC.

+ + + + +

TUESDAY

MAY 7, 2013

+ + + + +

The conference call was held, Michele  
Evans, Chairperson of the Petition Review Board,  
presiding.

PETITIONERS: TIMOTHY L. JUDSON

PAUL GUNTER

DEB KATZ

JESSICA AZULAY

CHRIS WILLIAMS

MARY LAMPERT

FACILITATORS: LISA CLARK

JOAN OLMSTEAD

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## P R O C E E D I N G S

1:00 P.M.

FACILITATOR OLMSTEAD: Good afternoon.

I'd like to open this meeting. My name is Joan Olmstead and this is Lisa Clark. We're members of the NRC's Facilitators Program and we'll be facilitating today's meeting. Our role is to help ensure today's meeting is informative and productive.

The purpose of today's meeting is to allow the Petitioners from Citizens Awareness Network Alliance for a Green Economy, Pilgrim Watch, Vermont Citizens Action Network, and Beyond Nuclear, represented by Mr. Timothy Judson, to address the Petition Review Board regarding a 2.206 petition, dated March 18, 2013.

The Petitioners request that NRC take enforcement-related action against Entergy Nuclear Operation, Inc. who jointly possess the licenses for other Entergy subsidiaries, the three plants subject to this petition: James A. FitzPatrick Nuclear Power Plant, Vermont Yankee Nuclear Power Station, and Pilgrim Nuclear Power Station.

This meeting is scheduled for an hour and a half from 1:00 p.m. to 2:30 p.m. It's being recorded by the NRC Operations Center and will be

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1 transcribed by a court reporter. The transcript will  
2 become a supplement to the petition. Prior to  
3 placing the transcript in ADAMS, the PRB, which is  
4 the Petition Review Board, will review it to ensure  
5 that it does not contain any allegations or sensitive  
6 information.

7 To get a good transcript and minimize  
8 distractions we ask that you turn off or mute any  
9 devices that ring or buzz or beep or has an alarm.  
10 And for those dialing into the meeting, please  
11 remember to mute your phones. If you do not have a  
12 mute button you can press \*6 to mute your phone. To  
13 unmute, press the \*6 key again. And I'd like to  
14 emphasize we need to speak clearly and loudly to make  
15 sure the court reporter can accurately transcribe the  
16 meeting. If you do have something that you would  
17 like to say, please state your name first for the  
18 record. And we ask you to minimize any side  
19 conversations during the meeting. We will try to  
20 have only one speaker at a time.

21 We are always looking to improve our  
22 meetings and your feedback is important to us. At  
23 the end of the meeting, please complete a feedback  
24 form and return to us. For those here at NRC  
25 Headquarters, we'll provide you with a public meeting

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1 form feedback and you may leave them here or mail  
2 them back here. They're already post paid. If  
3 you're participating by phone and would like to leave  
4 an email feedback on this public meeting, please  
5 forward your comments to the meeting contact, Rich  
6 Guzman, by email at richard.guzman -- G-U-Z-M-A-N --  
7 @nrc.gov.

8 Now I'd like to have the NRC meeting  
9 participants introduce themselves. I ask all of the  
10 participants to clearly state your name for the  
11 record and your position and your organization. For  
12 those here in the room, please speak up so those on  
13 the phone can hear clearly and so that the court  
14 reporter can accurately record your name.

15 And I'll start first and then the other  
16 NRC participants in the room can also introduce  
17 themselves afterwards. My name is Joan Olmstead.  
18 I'm representing the NRC Facilitators Program here  
19 and I also work for the Office of General Counsel.

20 FACILITATOR CLARK: I'm Lisa Clark. I'm  
21 also here as a facilitator and I work in the NRC's  
22 Office of General Counsel.

23 MS. JEHLE: I'm Patty Jehle, also in the  
24 Office of General Counsel and Materials Litigation  
25 and Enforcement.

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1 MR. GUZMAN: My name is Rich Guzman. I'm  
2 a project manager from the Division of Operating  
3 Reactor Licensing, or DORL, in the Office of Nuclear  
4 Reactor Regulation, NRR.

5 MS. MENSAH: My name is Tanya Mensah.  
6 I'm a 2.206 Coordinator in the Office of Nuclear  
7 Reactor Regulation, Division of Policy and  
8 Rulemaking.

9 CHAIRPERSON EVANS: I'm Michele Evans.  
10 I'm the Director of the Division of Operating Reactor  
11 Licensing in NRR.

12 MS. SIMMONS: I'm Anneliese Simmons. I'm  
13 a financial analyst with the Division of Inspection  
14 and Regional Support in the Office of Nuclear Reactor  
15 Regulation.

16 MS. LIAN: I'm Jocelyn Lian also  
17 financial analyst at Division of Inspection and  
18 Regional Support.

19 MR. REGAN: Chris Regan, Chief of the  
20 Financial Analysis and International Projects Branch,  
21 in the Division of Inspection and Regional Support in  
22 the Office of Nuclear Reactor Regulation.

23 MS. SIMPSON: I'm Jo Ann Simpson, a  
24 financial analyst in the Division of Inspection and  
25 Regional Support within the Office of Nuclear Reactor

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1 Regulation.

2 MR. MEIGHAN: Sean Meighan, Acting Branch  
3 Chief, Branch 11 in Division of Reactor Licensing.

4 FACILITATOR OLMSTEAD: Okay, that  
5 completes the introductions of NRC staff in the room.  
6 Is there anyone else from NRC from Headquarters also  
7 listening on the phone?

8 Are there any NRC participants from the  
9 Regional Offices on the phone?

10 MR. MCCARVER: This is Sam McCarver,  
11 Project Engineer, Division of Reactor Projects, NRC  
12 Region I.

13 FACILITATOR OLMSTEAD: Anyone else?  
14 Okay, will the representatives, Entergy, the licensee  
15 for the subject plants on the phone introduce  
16 themselves?

17 MR. MANNAI: Yes, this is David Mannai,  
18 Senior Engineer, Nuclear Safety Licensing for HD  
19 Nuclear Northeast.

20 MR. GREEN: This is Derek Green. I'm the  
21 Vice President of Risk and Finance.

22 MR. KUTCHER: Bill Kutcher, Senior  
23 Licensing Specialist at Vermont Yankee.

24 MR. LYNCH: This is Joe Lynch, Licensing  
25 Manager, Entergy Pilgrim Station.

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1 FACILITATOR OLMSTEAD: Is there anyone  
2 else representing the licensee on the phone?

3 Mr. Judson, will you please introduce  
4 yourself for the record and also any other  
5 Petitioners who are participating in today's meeting?

6 PETITIONER JUDSON: Sure, my name is  
7 Timothy Judson. I'm the President of Citizens  
8 Awareness Network and the Down State Coordinator for  
9 the Alliance for a Green Economy.

10 I'm joined today by my co-Petitioners,  
11 Paul Gunter from Beyond Nuclear, who is here in the  
12 room. And on the phone, we have four of our co-  
13 Petitioners, Jessica Azulay, who is the organizer for  
14 the Alliance for a Green Economy; Deb Katz, who is  
15 the Executive Director of Citizens Awareness Network;  
16 Mary Lampert, who is the Director of Pilgrim Watch;  
17 and Chris Williams, who is the President of Vermont  
18 Citizens Action Network.

19 And if you guys want to introduce  
20 yourselves or confirm you're here, please do.

21 PETITIONER WILLIAMS: This is Chris. I'm  
22 here.

23 PETITIONER KATZ: This is Deb Katz. I'm  
24 here.

25 PETITIONER AZULAY: This is Jessica

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1 Azulay. I'm here.

2 FACILITATOR OLMSTEAD: Okay, it's not  
3 required for members of the public to introduce  
4 themselves. However, if you wish to introduce  
5 yourself and state your name that would be great for  
6 the record.

7 Okay, I'm going to turn this over to Lisa  
8 now and she's going to talk about, in general terms,  
9 about the Section 2.206 petition process.

10 FACILITATOR CLARK: Thank you, Joan. Our  
11 Section 2.206 of Title 10 of the Code of Federal  
12 Regulations describes the petition process. This is  
13 our primary mechanism for the public to request  
14 enforcement action by the NRC in a public process.  
15 This process permits anyone to petition the NRC to  
16 take enforcement-type action related to NRC licensees  
17 or licensed activities. Depending on the results of  
18 its evaluation of the petition, the NRC can take  
19 action to modify, suspend, or revoke an NRC-issued  
20 license or to take any other appropriate enforcement  
21 action to resolve the problem.

22 The NRC staff's guidance for the  
23 disposition of 2.206 petition request is found in  
24 Management Directive 8.11 which is publicly  
25 available.

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1           The purpose of today's meeting is to give  
2           the Petitioners the opportunity to provide any  
3           additional explanation or support for the petition  
4           before the Petition Review Board's initial  
5           consideration and recommendation.

6           This meeting is not an adjudicatory  
7           hearing, nor is it an opportunity for Petitioners to  
8           question or examine the Review Board on the merits or  
9           the issues presented in the petition request. No  
10          decisions on the merits of this petition will be made  
11          at this meeting.

12          Following this meeting, the Petition  
13          Review Board will conduct its internal deliberations.  
14          The outcome of this internal meeting will be  
15          discussed with the Petitioners. The Petition Review  
16          Board typically consists of a chairman, usually a  
17          manager at the Senior Executive Service level at the  
18          NRC. It has a Petition Manager and other members of  
19          the Board are determined by the NRC staff based on  
20          the content of the information in the petition  
21          request.

22          The members of this Board are Michele  
23          Evans, who serves as the Chair; Rich Guzman, is the  
24          Petition Manager; Tanya Mensah is the 2.206  
25          Coordinator. We also today have technical staff, in

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1 particular, Ms. Anneliese Simmons and Jocelyn Lian,  
2 who are both financial analysts in the Division of  
3 Inspection and Regional Support. On the phone we  
4 have Mr. Sam McCarver, who is a Project Engineer from  
5 the NRC's Region I Office. Ms. Patricia Jehle is  
6 with the Office of General Counsel and a legal  
7 advisor on the petition.

8 As described in our process, the NRC  
9 staff may ask clarifying questions in order to better  
10 understand his presentation and to reach a reasoned  
11 decision whether to accept or reject your request for  
12 review under 2.206 process. Also, as described in  
13 our process, the licensees have been invited to  
14 participate in today's meeting to ensure that they  
15 understand the concerns about their facility or  
16 activities.

17 While licensees may also ask questions to  
18 clarify issues about process, I want to stress that  
19 licensees are not a part of the Board's decision-  
20 making process.

21 I would now like to turn the meeting over  
22 to Michele Evans, the Chair of the Board, who will  
23 discuss the specific petition under consideration.

24 CHAIRPERSON EVANS: Thank you, Lisa. I'd  
25 like to begin by summarizing the PRB's understanding

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1 of the scope of the petition under consideration and  
2 the NRC activities to date. On March 18, 2013, the  
3 Petitioners submitted a petition under Title 10 of  
4 the Code of Federal Regulations, Part 2.206  
5 requesting that the NRC immediately order Entergy to  
6 suspend operations at FitzPatrick and Vermont Yankee.

7 The Petitioners also requested that the NRC  
8 investigate whether Entergy Nuclear, LLC possesses  
9 sufficient funds to cease operations and to  
10 decommission the FitzPatrick reactor, and other  
11 Entergy nuclear operations, possesses sufficient  
12 funds to cease operations and to decommission the  
13 Vermont Yankee reactor per 10 CFR 50.75.

14 In addition, the Petitioners requested  
15 that the NRC commence an investigation of the Pilgrim  
16 Nuclear Power Station in order to determine whether  
17 Entergy Nuclear Operations, Inc. has the current  
18 financial qualifications of the Pilgrim licensees to  
19 continue safe operation of the facility.

20 The PRB met on April 8, 2013 to consider  
21 the immediate emergency actions requested in the  
22 petition. The PRB's decision was to deny the  
23 Petitioners' request for immediate suspension of the  
24 operating licensees for FitzPatrick and Vermont  
25 Yankee plants, concluding that Entergy's financial

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1 situation does not pose an immediate danger to the  
2 public health and safety and the environment. Mr.  
3 Judson was informed of this decision on April 15,  
4 2013.

5 The determination was based, in part, on  
6 the immediate emergency shutdown of FitzPatrick and  
7 Vermont Yankee as requested by the Petitioners was  
8 not necessary to protect public health and safety.  
9 The NRC relies on multiple engineered barriers and  
10 multiple levels of reactor oversight that have been  
11 established through NRC regulations to provide  
12 reasonable assurance of adequate protection of public  
13 health and safety and the environment.

14 Additionally, emergent safety concerns  
15 are promptly assessed through the NRC's reactor  
16 oversight process which requires that licensees show  
17 prompt corrective actions to resolve safety concerns.

18 On-site resident inspectors monitor the day-to-day  
19 operations of the plant providing additional  
20 assurance.

21 On April 10th, Mr. Judson had requested  
22 an opportunity to address this PRB in a public  
23 meeting which is the purpose of today's meeting. So  
24 as a reminder for the meeting participants, please  
25 identify yourself if you make any remarks as this

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1 will help us in the preparation of the meeting  
2 transcript that will be made publicly available. In  
3 addition, the NRC staff verified that there was no  
4 sensitive or proprietary information contained within  
5 the petition. Since this is a public  
6 meeting, I'd like to remind the PRB members and the  
7 licensee and the Petitioners and other meeting  
8 participants of the need to refrain from discussing  
9 any NRC sensitive or proprietary information during  
10 today's public meeting.

11 Mr. Judson, I'd like to turn it over to  
12 you to allow you to provide any additional  
13 information you or your fellow Petitioners believe  
14 the PRB should consider as part of this petition. I  
15 would say generally you have about an hour for your  
16 opportunity to present. Thank you.

17 PETITIONER JUDSON: Thank you, Ms. Evans,  
18 for the opportunity to present today and thanks to  
19 the Petition Review Board and the NRC for this  
20 opportunity to address the Board regarding our  
21 petition for emergency enforcement action.

22 We've taken the liberty of organizing  
23 sort of an agenda for our presentation which I'd like  
24 to share with everyone and sort of run through. I'll  
25 be offering some introductory comments and an

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1 overview of our request and our interpretation of the  
2 regulations that are involved in this.

3 In addition, in Ms. Evans' recitation of  
4 the process up to this point, we did actually submit  
5 a supplement to our petition on April 23rd, including  
6 some supplementary materials that we obtained since  
7 we initially submitted the petition on March 18th  
8 which we'd also like to acknowledge as part of the  
9 record and soon it will be addressed in our comments  
10 here today.

11 After my introductory comments, I turn it  
12 over to Jessica Azulay, as agreed, to discuss the  
13 financial qualifications requirements and how we  
14 interpret the financial condition that Entergy is in  
15 with respect to its decision making regarding safety  
16 issues going forward and how that applies to our  
17 request for enforcement action.

18 After that, Paul Gunter will address the  
19 nexus to nuclear safety with financial  
20 qualifications, conditions, and the operating  
21 environment that these reactors are in going forward.

22 After that, Deb Katz will discuss issues  
23 with Entergy's management practices and how they  
24 relate to regulatory compliance issues going forward.

25 After that, we'll review some plant-

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1 specific considerations for each of the reactors that  
2 are the subject of the petition and expect to be  
3 joined in that part by Mary Lambert from Pilgrim  
4 Watch.

5 And then after that I'll conclude my  
6 presentation and open it up for any questions that  
7 the Board or the licensee has.

8 So with that said, we recognize coming  
9 into this meeting that this moment that we're in and  
10 what this petition represents -- well, we expect a  
11 fairly unprecedented situation that's occurring in  
12 the nuclear industry at this moment. It may not have  
13 been fully anticipated in the NRC's adopting of the  
14 regulations and the NRC's review of financial  
15 qualification issues when essentially this period of  
16 deregulation started.

17 All three of the reactors are subject to  
18 this petition, operate and deregulate the electricity  
19 markets in the Northeast. They were acquired by  
20 Entergy about 10 or 12 years ago through license  
21 transfer processes that included a financial  
22 qualifications review and that NRC based on the  
23 filings that were made at the time approved. And  
24 what we note is that the recent reports coming from  
25 the investment community note that the fundamental

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1 financial conditions under which these reactors are  
2 operating has fundamentally changed since Entergy  
3 acquired the licenses to operate these reactors and  
4 that this has happened to a degree which requires  
5 regulatory enforcement action which is what we're  
6 highlighting in our petition.

7 We recognize that NRC has taken notice of  
8 this through instituting a request for additional  
9 information to Entergy regarding the financial  
10 qualifications for the Vermont Yankee reactor. We  
11 think that actually this needs, this enforcement  
12 action needs to go much further to encompass all of  
13 the reactors that have been highlighted as having  
14 financial qualifications problems by the investment  
15 community.

16 To lay some groundwork in terms of the  
17 regulations that we're citing in our petition and  
18 that we hope to be enforced, the financial  
19 qualifications regulations are set by 10 CFR 10 Part  
20 33 Section (f) and in particular, regarding the  
21 acquisition of the licenses by Entergy, 50.33(f)(2).

22 And what that requires is that at the time of  
23 applying for the acquisition of the licenses, the  
24 licensee had to make a filing essentially saying that  
25 the applicant shall submit information that

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1 demonstrates the applicant possesses or has  
2 reasonable assurance of obtaining the funds necessary  
3 to cover estimated operation costs for the period of  
4 the license. So at the time of acquisition was  
5 before most of these plants had been relicensed, was  
6 for the period of the operating license. There was  
7 no similar financial qualifications review upon the  
8 relicensing of all three of these reactors. But we  
9 interpret the regulations as requiring that the  
10 licensee remain financially qualified for now the  
11 period of these extended operating licenses through  
12 the licensing process.

13 In addition, we have cited 50.33(f)(5)  
14 which essentially acknowledges that the financial  
15 conditions of licensees, the financial qualifications  
16 of licensees can change over the period of a license  
17 and that given additional information, the NRC may  
18 institute a proceeding to request information and  
19 potentially to take enforcement action.

20 In addition, we recognize another  
21 regulation, 50.110 Section (a)(3), which essentially  
22 allows the NRC to take preemptive enforcement action  
23 to prevent the licensee from violating regulations in  
24 the future. And given essentially what we interpret  
25 as the purpose and the function of financial

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1 qualifications regulations, and the fact that  
2 Entergy, at least at two of these reactors, has been  
3 demonstrated to not be financially qualified, that  
4 the NRC must essentially take regulatory enforcement  
5 action to prevent those conditions from leading to  
6 further safety violations at these reactors and  
7 potentially compromising the public health and  
8 safety.

9 In addition, we cite to 50.82(a)(2) which  
10 essentially covers the enforcement action we request  
11 which is the permanent cessation of operations and  
12 the requirement that the licensee refrain from  
13 refueling of reactors and remove fuel from the cores  
14 in order to begin the transition into a  
15 decommissioning phase.

16 And in addition, and incumbent upon the  
17 beginning of the cessation of operations, is 50.75  
18 which covers financial decommissioning funding  
19 assurance regulations and assuring that the licensees  
20 have the financial means to begin the decommissioning  
21 process.

22 So all that said, the subject of our  
23 petition is the financial qualifications of these  
24 licensees to continue operating these reactors. And  
25 we recognize that it's not the NRC's business to

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1 micromanage the finances of its licensees. And in  
2 fact, we feel that that's actually completely  
3 inconsistent with the enforcement actions that we're  
4 requesting. The financial qualifications regulations  
5 are essentially in place to prevent licensees from  
6 being in exactly the situation that the Entergy  
7 licensees find themselves in at this moment which is  
8 essentially to ensure that the licensees are not  
9 going to be in a position where they have to think  
10 about whether these assets are a liability on their  
11 corporate balance sheets and they are essentially  
12 distressed assets at this point.

13 We initially challenged the transfer of  
14 the FitzPatrick license to Entergy back in 2000 and  
15 2001 and we got a hearing before the Commission on  
16 that contention of financial qualifications. And at  
17 the time, we became very familiar with the standard  
18 review procedure for financial qualifications that  
19 the NRC uses and particularly this issue of requiring  
20 the licensee to submit five-year cost and revenue  
21 projections. As we understand it, the NRC basically  
22 has a boilerplate method of assessing financial  
23 qualifications of licensees using a foreseeable  
24 window of financial conditions involving this five-  
25 year cost and revenue projections as a way to

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1 forecast whether the licensee is going to remain  
2 financially qualified for the period of the license  
3 in order to make that kind of licensing decision.

4 Now in that proceeding, we had challenged  
5 Entergy's financial qualifications on a couple of  
6 points, one of them being the projected capacity  
7 factors which Entergy was going to be operating the  
8 plants. Its estimation with FitzPatrick was that,  
9 for instance, that it would operate FitzPatrick at an  
10 85 percent capacity factor, meaning that it was going  
11 to be online and generating revenue 85 percent of the  
12 time on average and as well as we also challenged  
13 their estimates of operating costs. And in the end,  
14 the Commission decided that it thought that Entergy's  
15 projections were reasonable and conservative, that  
16 they were able to withstand reasonable changes,  
17 reasonable shortfalls in that capacity factor where  
18 that capacity factor was a realistic estimate of what  
19 the plant's performance was going to be going  
20 forward.

21 And with the operating costs, they felt comfortable  
22 with what Entergy was estimating for the operating  
23 costs of the plant.

24 What has become apparent in the recent  
25 news coming from UBS investment research analyses of

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1     Enterger's finances is that those projections, however  
2     valid they were at the time, are no longer valid.  
3     And that, in fact, Enterger is operating at least two  
4     of the three reactors in its merchant fleet, mainly  
5     Vermont Yankee and FitzPatrick had operating deficits  
6     and significant operating deficits and that it will  
7     continue to be operating in these deficits for years  
8     to come. And interestingly, in the documents that we  
9     obtained since we initially filed the reactor, UBS  
10    has actually done plant-specific cost and revenue  
11    projections for Vermont Yankee and FitzPatrick that,  
12    in fact, confirm this and actually show ballooning  
13    operating cash flow deficits in the years to come.  
14    And that this really is a signal that the financial  
15    climate in which these plants are being operated has  
16    fundamentally changed.

17                 There's a way in which -- this is coming  
18    up now, I think CAN and other groups had raised the  
19    possibility of these kind of market uncertainties  
20    when these licenses were transferred at the advent of  
21    deregulation. NRC, in fact, took a hard look at it  
22    themselves. During the first years of deregulation,  
23    these issues didn't come up because the electricity  
24    markets in the country were fundamentally different.

25    There was actually a period through the mid-2000

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1 aughts where electricity prices had ballooned  
2 substantially from where they were at the beginning  
3 of this experiment.

4 Over the last five years, we've seen a  
5 precipitous change in the other direction and given  
6 advents within the energy markets nationwide, what  
7 UBS is highlighting is that those conditions are  
8 expected to continue for the foreseeable future.

9 And we're not here to predict whether in 10 or 15  
10 years from now the same thing is going to be true,  
11 but what we are concerned about is that these  
12 licensees, if the NRC does not take enforcement  
13 action now are going to be operating these plants in  
14 a financially unqualified condition potentially for  
15 years at this point. That is an unacceptable risk to  
16 public health and safety and that the kind of safety  
17 problems that we've seen accumulating as enumerated  
18 in our petition so far had the potential to become  
19 cumulative over time and reach a point where some  
20 things that were enacted may actually occur.  
21 Essentially, it's not predictable when that might  
22 happen, but that the financial qualifications  
23 regulations are in place specifically to prevent this  
24 sort of situation from occurring to begin with. And  
25 that's what we're asking the NRC to enforce.

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1           So some of the pertinent aspects of our  
2 petition and the supplementary information that we  
3 presented that some of the public may not have had a  
4 chance to review yet involve the following. First,  
5 UBS is projecting substantial cash-flow deficits for  
6 Vermont Yankee and FitzPatrick, that these are not  
7 trivial deficits that they're projecting. They're on  
8 the order of in the case of Vermont Yankee on the  
9 order of \$31 million per year over the next four  
10 years; at FitzPatrick even more, \$34 million per  
11 year. This is more than ten percent of their  
12 operating revenues, these deficits are projected for.

13           Cumulatively, by 2016, FitzPatrick is  
14 estimated to be in the hole by \$136 million and  
15 Vermont Yankee, based on our correction of some  
16 errors in UBS' analysis to \$125 million in the hole.  
17 This is way beyond anything that the NRC was  
18 prepared to accept in its initial financial  
19 qualifications reviews of these plants.

20           Now one of the things that's interesting  
21 about UBS' analysis is that it shows that those  
22 initial filings are completely invalid at this point,  
23 the filings that Entergy made in the license transfer  
24 proceedings. First of all, we note in our petition  
25 that the current electric rates that these plants are

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1 operating, the market prices for electricity in the  
2 markets that these plants are operating in are  
3 substantially lower than the contract prices that  
4 they relied upon when they bought the plants. When  
5 each of these plants was purchased by Entergy they  
6 were accompanied by a contract, a power purchase  
7 agreement, with the plant's original owner to buy  
8 most or all of the output from the plants for several  
9 years into the future. In the case of Vermont Yankee  
10 and FitzPatrick, it was on the order of ten years,  
11 those power purchase agreements.

12 The rates that they were guaranteed under  
13 those power purchase agreements as we note in our  
14 petition are substantially higher than what current  
15 market prices for electricity allow. Just as a for  
16 instance, FitzPatrick, the power purchase agreement  
17 price was 13 percent higher than what the average  
18 price for electricity in the Upstate New York market  
19 has been over the last two years. And last year, the  
20 declining prices in the market fell below 25 percent  
21 lower than what that PPA price was.

22 And Vermont Yankee, we see something very  
23 similar on the order of 20 percent lower in the last  
24 year versus what the power purchase agreement price  
25 was. And when we look at Pilgrim, it's actually

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1 larger. The final year's price and their power  
2 purchase agreement with Boston Edison back in the  
3 '90s was almost 40 percent higher than what current  
4 market prices in the New England markets provide.

5 And so this is essentially tinkering  
6 around the edges with the finances of these plants,  
7 whether they can achieve some reductions in tax  
8 breaks or whether other sort of programs is not going  
9 to make the difference. These are large, structural  
10 deficits in their finances that the NRC has to  
11 consider when looking at their financial  
12 qualifications.

13 in addition, UBS notes that these plants  
14 have been performing at extremely high levels of  
15 performance way beyond what was projected in the  
16 initial financial qualifications filings.  
17 FitzPatrick, for instance, has operated in excess of  
18 94 percent capacity factor within the last or at  
19 least until last year within the previous four years,  
20 and whereas it was originally projected to run at 85  
21 percent.

22 However, what we see in UBS' analysis is  
23 that despite running at this, at an even higher  
24 capacity factor than projected, FitzPatrick was  
25 essentially break even last year on costs. And what

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1 that suggests is that the operating costs for the  
2 reactors have also increased beyond what was  
3 projected in the initial financial qualifications  
4 filings. And in fact, as what we discussed later, we  
5 know that there's ballooning maintenance expenses  
6 that are required if these reactors are going to  
7 continue to be operated safely and reliably in the  
8 future which need to be taken account of.

9 In addition, per the last point about the  
10 capacity factors, UBS' projections are actually non-  
11 conservative in this regard. UBS, by projecting as  
12 indicated with FitzPatrick in our supplement,  
13 projecting 94 percent capacity factors over the next  
14 four years, basically leaves little or no room for  
15 shortfalls. While projecting operating cash flow  
16 shortfalls at these reactors, they're doing that even  
17 projecting the highest levels of performance that  
18 could be expected out of these reactors. And as we  
19 indicated in the petition, under estimating to some  
20 extent the capital expenses that are going to be  
21 necessary in order to maintain those kind of  
22 performance levels.

23 So what we expect is actually that if you  
24 sensitivity tested these projections that UBS  
25 provided for reasonable expectations of plant

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1 performance, even factoring in the lower performance  
2 of FitzPatrick in 2012, you would end up at a 91  
3 percent capacity factor going forward which would  
4 lead to something around \$170 million cash flow  
5 deficit over the next four years instead of \$135  
6 million. So this is a very deep hole they're in that  
7 could easily get much deeper depending on the actual  
8 circumstances of the operation of these plants.

9 In addition, what becomes clear from UBS'  
10 analysis is that Entergy is in no position to be able  
11 to prioritize safe operations and compliance with  
12 their license going forward, given that they're in  
13 this financially unqualified condition. UBS lays out  
14 a number of different imperatives that are affecting  
15 Entergy's decision making with regard to these  
16 plants. And in fact, UBS's evaluations from a  
17 shareholder's perspective have been shifting over the  
18 last few months as well reflecting this.

19 On the one hand, UBS points out that  
20 there are clear upsides to Entergy's overall  
21 financial performance to shutting these reactors, to  
22 basically cutting their losses and ending these  
23 operating cash flow deficits, that they would  
24 actually see their net earnings per share increase  
25 and this would be a benefit to their shareholders

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1 potentially. But at the same time, the closure of  
2 these plants could dampen market sentiment and could  
3 convert investor confidence and ultimately their  
4 share price which is sort of the countervailing  
5 pressure that Entergy has to consider in all of this.

6 In addition, UBS has highlighted the  
7 prospect that by making essentially a decision to  
8 shut these reactors early that Entergy could incur a  
9 decommissioning liability on the estimated cost of  
10 the minimum funding requirements that NRC has in  
11 place for decommissioning. We say that noting that  
12 all three of these reactors actually are projected to  
13 have surplus decommissioning funds in their funds  
14 now, but knowing that NRC is revising its minimum  
15 funding requirements this year which will be released  
16 in late fall, that UBS is very concerned that may  
17 diminish those margins of decommissioning funds,  
18 potentially even going into negative and that this is  
19 another factor that's weighing on Entergy's mind,  
20 what is going to be impacted in terms of investor  
21 confidence and its shareholders.

22 What also becomes apparent from looking  
23 at the analysis that UBS provides is that we're not  
24 dealing with just an individual reactor here. NRC  
25 regulations very carefully -- individual reactors are

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1 licensed to individual licensees and there's an  
2 expectation that each reactor has to be maintained in  
3 compliance with the regulations on its own basis.

4 What's clear from UBS' analysis is that  
5 Entergy is not in a position to be thinking about one  
6 plant at a time, that this is actually a circumstance  
7 affecting their entire merchant nuclear fleet. And  
8 in fact, UBS' analysis is directed towards an  
9 analysis of their performance of Entergy's Wholesale  
10 Commodities Division, essentially their merchant  
11 power division, and noting that in particular, the  
12 merchant nuclear fleet is hurting the company's  
13 overall performance and then UBS highlights these  
14 individual plants as particularly the bad apples that  
15 are really dragging down the entire company.

16 From that standpoint, Entergy isn't in a  
17 position to be dealing with one plant at a time, that  
18 really there's a structural problem with the  
19 liability of carrying honest balance sheets from  
20 these merchant reactors that clouds its judgment  
21 about each individual plant and what's going to  
22 happen there.

23 There's also as Entergy is sort of being  
24 pulled in these different directions about what's the  
25 best thing for shareholders, what's the best thing

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1 for its corporate performance, UBS, the investment  
2 community and the trade press are holding out these  
3 sort of hail Mary opportunities that Entergy may be  
4 relying on as a way to try to figure out ultimately  
5 what it's going to do here.

6 In particular, the possibility that  
7 Entergy may be able to leverage some sort of an  
8 above-market rate bilateral contracts for output from  
9 these plants, whether the regional independent system  
10 operators that run the market flow will essentially  
11 declare higher price in the capacity markets that  
12 they may be able to take advantage of.

13 These are all highly speculative  
14 developments. And in fact, they're not helpful in  
15 terms of analyzing the situation. While certainly in  
16 a theoretical sense there may be some miracle that  
17 comes down to save these plants, in fact, Entergy is  
18 not in a position to expect any favors from the  
19 states in which these plants are operating. Both  
20 Vermont and New York and Massachusetts have all  
21 challenged in the license extensions on these plants.

22 And Entergy is involved in litigation against New  
23 York and Vermont that has set a very tense  
24 relationship with the state governments in these  
25 states.

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1           The idea that Entergy is going to get a  
2           favor from New York and Vermont in order to prop up  
3           plants that are not financially qualified is somewhat  
4           speculative. But if Entergy has specific information  
5           to share that shines light on that, that there is a  
6           miracle to save these plants, we'd like to see it.

7           In addition, there are some obstacles  
8           that stand in the way of any of this working out.  
9           First of all, essentially the problem that the  
10          FitzPatrick reactor faces is one of overcapacity in a  
11          region. The market price in that part of New York  
12          State are low, in part because there's a vast over  
13          capacity and generation capacity in Central and  
14          Western New York. And the same is true to a lesser  
15          extent in New England. But one of the dynamics that  
16          UBS points out in its analyses is that all the  
17          generators in the region are under the same pressure.

18          And as certain plants declare their intent to close,  
19          there may be a positive impact on electricity rates  
20          in the region. And in particular, we think this is a  
21          dangerous notion to hold on to from the standpoint of  
22          financial qualifications in nuclear safety.

23          At the same time that UBS is indicating  
24          this, it also analyzes one of Entergy's competitors  
25          in the New York market which is Exelon which operates

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1 the Ginna and the Nine Mile Point Unit 1 and 2  
2 reactors in the same market that FitzPatrick is in.  
3 While noting that Ginna and FitzPatrick are  
4 essentially in similar circumstances and recommending  
5 -- predicting that Exelon and Entergy may decide to  
6 close those reactors, UBS notes that should Ginna  
7 close that it could actually help Exelon's other  
8 units operating in the region by essentially  
9 stimulating the electricity price and allowing them  
10 to generate more revenue.

11 However, given that Ginna is under a power purchase  
12 agreement with Rochester Gas and Electric until mid-  
13 2014, they don't expect that Exelon would make any  
14 decisions about the future of Ginna until 2015.

15 Entergy is not in a similar situation at  
16 FitzPatrick. Its power purchase agreement with the  
17 State Power Authority ended in December. It has  
18 offered a completely off-of-market revenues at this  
19 point in this depressed market environment. The idea  
20 that Entergy could be allowed to operate this plant  
21 in a financially unqualified situation for a year and  
22 a half to two years while waiting for essentially a  
23 hail Mary pass from the state or from the market is  
24 frankly dangerous, especially given the trend in  
25 performance we've seen of this reactor just in the

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1 last year when essentially it was under a power  
2 purchase agreement with a guaranteed revenue price  
3 and still only broke even in 2012.

4 So this is really -- Entergy finds itself  
5 essentially in a cat's cradle of different financial  
6 imperatives that it has to consider and without  
7 respect to the requirements of its license. These  
8 are primary corporate considerations that it has  
9 under SEC regulations to the particular interests of  
10 its shareholders. And we don't believe that there's  
11 been a clear a situation in which a licensee found  
12 itself in conflict between its SEC obligations and  
13 its NRC regulations until now.

14 So with that said, what's clear is that  
15 from Entergy's standpoint it is viewing its operation  
16 of these -- it's viewing these reactors not as -- not  
17 primarily through the lens of their license  
18 responsibilities under NRC, but essentially as  
19 distressed assets, that these are similar to other  
20 real sort of assets that are in distress. They're  
21 not able to generate enough revenue to cover their  
22 costs. They have liabilities that they're locked  
23 into for decommissioning that are in the hundreds of  
24 millions of dollars and essentially their assets that  
25 Entergy can't unload in any meaningful way. In fact,

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1     Entergy, as you remember three years ago, tried to  
2     find a way to offload these merchant nuclear units  
3     into a different corporation essentially what's  
4     called a nexus spinoff, that it would have been a  
5     resolution for Entergy corporate in this situation.  
6     It would have obviously led to the same situation  
7     that we're in now with the financial qualifications  
8     for the licensees, but that Entergy corporate is no  
9     longer in this situation. That scheme for how to  
10    handle these liabilities was blocked by New York  
11    State and given what is now known which is that these  
12    plants are not able to operate profitably in their  
13    market, that no one is prepared to take them off  
14    their hands. I mean Entergy is among nuclear reactor  
15    operators one of the best equipped to take advantage  
16    of any economies of scale that might be involved in  
17    assembling a large fleet of reactors. It's also  
18    clear that Exelon which in that same line of argument  
19    is in the same situation, is encountering the same  
20    problems with its own reactors and some electricity  
21    markets.

22             Entergy is locked into these distressed  
23    assets and essentially it's in a mode right now where  
24    it is essentially in triage and is attempting to  
25    minimize its losses while maintaining the status quo

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1 which from a safety standpoint is unacceptable and  
2 that's why NRC intervention is necessary.

3 With that, I'd like to turn it over to  
4 Jessica Azulay to go into this in more depth.

5 Jessica?

6 PETITIONER AZULAY: Can you hear me?  
7 Okay, great. Thank you for this opportunity to  
8 address you today. I'm Jessica Azulay, organizer for  
9 Alliance for a Green Economy. And I'm calling from  
10 Syracuse, New York to urgently ask you to step in  
11 during what we believe is a very dangerous time for  
12 Entergy and therefore a very dangerous time for  
13 members of the public who live near Entergy reactors.

14 There's an undeniable tension at issue in  
15 this hearing. This tension is between nuclear safety  
16 and corporate profit. As a corporation, Entergy must  
17 contend with this tension as it operates FitzPatrick,  
18 Vermont Yankee, and Pilgrim, under what we have every  
19 reason to believe will be increasing economic  
20 pressures.

21 Entergy's corporate structure does not  
22 put it in a position to act decisively in the  
23 interests of the public living near its reactors.  
24 There are just too many interests competing with the  
25 public safety. Most obviously, is its short term

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1 bottom line. That is why we are asking you, the NRC,  
2 to step in. As the industry regulator, the NRC  
3 should have no other competing interests when it  
4 comes to protecting public health and safety. The  
5 NRC must act decisively where Entergy cannot.

6 When the nuclear industry was  
7 deregulated, there was a lot of speculation about  
8 what would happen to nuclear power plants that could  
9 not compete while in the market. Some would  
10 obviously be uncompetitive and would close. Others  
11 would continue to turn a profit, but some -- these  
12 are called marginal plants, could be particularly  
13 dangerous.

14 Marginal plants would have the potential  
15 for profit, but would be skirting the edge. We just  
16 can't afford to allow nuclear plants to operate on  
17 the margins because the incentives for risk taking by  
18 nuclear operators is too great. The corporate  
19 structure, in fact, lends itself to favor short term  
20 risk taking over long term risk management.

21 The financial qualifications requirement  
22 that we're asking you to enforce today is the sanity  
23 check on the scenario and for it to be a meaningful  
24 check, it must be enforced.

25 I'd like to enter into the record an

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1 April 2012 article by Chancellor Leo E. Strine,  
2 Jr. [ADAMS Accession No. ML13133A412]. He's a Judge  
3 serving on Delaware's Court of Chancery. The article  
4 provides an essential analysis of the institutional  
5 and legal forces that can push corporate managers to  
6 take risks for the short term via stockholders. "The  
7 whole design of corporate law in the United States,"  
8 Chancellor Strine writes, "is built around the  
9 relationship between corporate managers and  
10 stockholders, not the relationships with other  
11 constituencies. In the corporate republic, only  
12 stockholders get to vote and only stockholders get to  
13 sue to enforce directors' fiduciary duties."

14 He goes on to point out that "corporate  
15 managers are increasingly subject to removal at the  
16 instance of highly aggressive institutional investors  
17 who do not hold shares or think long term." He gives  
18 multiple examples of how these institutional forces  
19 have caused companies to put profit for those who  
20 control the board's reelection prospect over positive  
21 outcomes for employees and communities who do not.

22 He gives some examples. He writes about  
23 the 2010 BP Deepwater Horizon oil spill in the Gulf  
24 of Mexico and the economic meltdown caused by the  
25 mortgage crisis. In which he says, "In the Deepwater

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1 Horizon disaster, BP is fit to gain all of the  
2 profits from its risky oil drilling practices while  
3 the cost of any accident would be spread out to  
4 others. The same is true of the banks which lent  
5 mortgages to people who could not pay them back and  
6 then passed the risk down to the line by bundling  
7 them into mortgage-backed securities."

8 "The lesson," writes Strine, "is simple.  
9 For-profit businesses have incentives towards  
10 current profit maximization, but make them poorly  
11 positioned to evaluate risk and be safe regulators."  
12

13 These lessons lend themselves well in  
14 comparison with the nuclear industry. The nuclear  
15 industry, similar to the oil and banking industries,  
16 is in a position where short-term profits benefit the  
17 executives and shareholders, while the risks and  
18 social costs of the potential accident are largely  
19 externalized.

20 So in the cases of the continued  
21 operations of FitzPatrick, Vermont Yankee, and  
22 Pilgrim, we must ask what is in the short-term  
23 interests of Entergy's shareholders as these reactors  
24 enter a period of economic distress? Do the  
25 interests of the public living near these plants and

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1 the interests of the shareholders align? Because if  
2 they do not, we can easily predict whose Entergy  
3 leadership  
4 will favor.

5 In the near term on a day-to-day basis we  
6 can expect that plant managers will do everything  
7 they can to cut costs while increasing production.  
8 We can expect them to try to reduce operations and  
9 maintenance costs, defer maintenance, reduce training  
10 costs, reduce staff and shorten refueling and other  
11 outages which are necessary to maintain systems and  
12 safety. This isn't about plant managers purposely or  
13 even knowingly jeopardizing public safety. It is  
14 about rational decisions being made to keep the plant  
15 in business.

16 In the 2001 book, Safety Culture and  
17 Nuclear Power Operations, Najmedin Meshkati, Thomas  
18 S. Butler, and Kendall Pelling wrote "Reductions in  
19 operations and maintenance expenditures could lessen  
20 the effectiveness of safety systems or impede  
21 operator effectiveness in preventing accidents,  
22 especially if those costs are excessive or poorly  
23 crafted. It may be tempting for plant management to  
24 rationalize that redundant safety control systems may  
25 be allowed to fall into disrepair. Cost-cutting

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1 efforts which are undertaken in the duress of  
2 financial losses may not fully appreciate the complex  
3 functions that certain expenditures provide for."

4 As we will detail later in this hearing,  
5 the Petitioners are concerned that we may already be  
6 seeing some of the effects of cost cutting and  
7 deferred maintenance at FitzPatrick, Vermont Yankee,  
8 and Pilgrim.

9 I have just discussed some of the short-  
10 term ways Entergy's management might seek to protect  
11 shareholders' interests. But what about the day-to-  
12 day operations? What about the question of whether  
13 Entergy will eventually close these reactors on its  
14 own if they continue to lose money? The financial  
15 services firm, UBS, has pointed out that it may help  
16 Entergy's share price in the long term if the  
17 reactors were to close, so at first glance it may  
18 seem in the interests of shareholders and the  
19 interests of public safety are aligned. But as we  
20 argued in our petition supplement and as Tim Judson  
21 has just argued again, we believe multiple factors  
22 may confound the issue for Entergy leadership, we  
23 think to a dangerous limbo position in which the  
24 company may neither invest in nor close the reactors.

25 A major disincentive to closure may be

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1 decommissioning liabilities which could be  
2 substantial for the plants that close before their  
3 licenses expire. There's also the possibility that  
4 shareholders and investors could react negatively to  
5 a decision to close one or more plants regardless of  
6 the upside. And finally, Entergy may hold out for  
7 either one of its competitors to close which may  
8 bring up electricity prices or it may hold out for  
9 taxpayer or rate payer bailout in the form of  
10 subsidies, higher capacity payments or power purchase  
11 agreements.

12 For these reasons, Entergy management may  
13 not be in a position to act decisively on this issue  
14 for some time to come and we cannot afford to wait.  
15 We need decisive action from the NRC and a commitment  
16 to enforce the financial qualifications requirement.

17 Entergy leadership's accountability is ultimately to  
18 its shareholders and it's not in a position to put  
19 public safety first at these troubled reactors. But  
20 you, the NRC Petition Review Board, you are  
21 ultimately accountable to us, to the public, and you  
22 must act in the interest of public health and safety.

23 You must be our voice in this matter. You must shut  
24 FitzPatrick and Vermont Yankee because Entergy is no  
25 longer financially qualified to operate them safely

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1 and you must swiftly find out whether Pilgrim is also  
2 in this dangerous category. Thank you.

3 FACILITATOR OLMSTEAD: I just want to  
4 interject. This is Joan Olmstead. You have about 25  
5 minutes left.

6 PETITIONER JUDSON: Thank you, Jessica.  
7 With that, I'd like to hand it over to Paul to talk  
8 about the nexus between these financial  
9 qualifications issues and nuclear safety in the  
10 operating environment.

11 PETITIONER GUNTER: Thank you. My name  
12 is Paul Gunter. I am the Director of the Reactor  
13 Oversight Project at Beyond Nuclear out of Takoma  
14 Park, Maryland. And I'm going to make my remarks  
15 brief because I think it's quite obvious that if the  
16 operator is financially distressed, particularly in  
17 the context a post-Fukushima environment,  
18 particularly with these three plants that are the  
19 focus of this petition being General Electric Mark I  
20 boiling water reactors, Fukushima designs, and  
21 subject to the Japan Lessons Learned Task Force and a  
22 whole host of upgrades that are now subject to orders  
23 and RAIs and increased scrutiny by this Agency, and  
24 more particularly by the public and its  
25 representation in Congress and at state levels.

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1 These issues are going to come under a more intense  
2 spotlight for both the responsibilities of the  
3 oversight as well as the responsibilities of the  
4 operators to look at the issues that Fukushima now  
5 demands of the safety reviews and the requirements  
6 and the fiscal responsibilities that come with it.

7 I'm particularly concerned and would like  
8 to focus on one particular order that's now before  
9 the Agency and the operators that regards the  
10 barriers that we heard referenced earlier today and  
11 part of the decision that concerns us is that we  
12 don't believe that the multiple barrier system that  
13 you rely on, that we rely on, that the industry rely  
14 on is adequate right now. And in fact, there's going  
15 to be more scrutiny, more fiscal responsibility to  
16 look at things like the Mark I pressure suppression  
17 containment system. No small ticket item.

18 This reflects upon a whole host of issues  
19 that if the operator is in a fiscal financial  
20 distress that the Agency has more responsibility now  
21 in its oversight to assure that the orders and the  
22 mitigation efforts are adequate. And right now we  
23 don't believe that to be the case. The Petition  
24 Review Board of the NRC also has before it the whole  
25 issue of noncompliance of general design criterion 16

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1 which regards an essentially leak-tight containment  
2 to protect against unreleased radiological releases.

3 So there are a number of financial  
4 responsibilities that are going to come out of this.

5 The whole issue and contest that we see currently  
6 with regard to whether or not to install the added  
7 cost of a filter to provided some -- to restore some  
8 iota of containment integrity and the tug of war that  
9 that's created now not only between the staff and the  
10 industry, but between the staff and its Commission,  
11 between Commissioner and Chair, these are the kinds  
12 of fiscal issues that are playing out that are  
13 particularly worrisome given the financial distress  
14 that this company is going for with regard to the  
15 containment issue just alone.

16 But the history is really rich with this  
17 concern where financial distress and fiscal gain has  
18 compromised public health and safety. Does it take  
19 going to the cover of Time Magazine for it to become  
20 an issue because we've been there. We know, for  
21 example, that Millstone in Connecticut in an effort  
22 to protect its financial margins rushed workers into  
23 refueling operations before the plant was even  
24 sufficiently cooled so that you had workers melting  
25 their boots on the cat walks of these facilities. So

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1 there is a very clear history of how competition,  
2 financial distress, how these can compromise not only  
3 worker safety, but public health and safety. And I  
4 think that we are in a period right now where not  
5 only will the operators' financial distress be under  
6 greater scrutiny because of the post-Fukushima  
7 environment but so will this Agency's oversight.  
8 Thank you.

9 PETITIONER JUDSON: Great, thank you,  
10 Paul. And with that I'd like to hand it over to Deb  
11 Katz of Citizens Awareness Network to talk about some  
12 specific issues with how Entergy's management relates  
13 to regulatory compliance issues.

14 PETITIONER KATZ: Hi, it's Deb Katz. I  
15 want to thank you for this opportunity to talk and I  
16 want to provide a kind of context with what's  
17 happening in Vermont for what, in fact, has gone on  
18 to one degree or another at all three of these  
19 reactor sites in the Northeast.

20 Entergy presently has an adversarial  
21 relationship with the State of Vermont. It has not  
22 lived up to the contract it signed with the state in  
23 2002 when it bought the reactor. It is, in fact,  
24 involved in three lawsuits with the state, one in  
25 terms of Act 160 which is now on appeal by the state

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1 in Appellate Court and there is the potential for the  
2 state to prevail. Is it also Entergy because it lost  
3 a tax case. It's appealing that case to the  
4 Appellate Court. We believe that the state will win  
5 that case and Entergy's taxes by the state will  
6 increase by potentially \$8 million a year.

7 It has also just gone to Court against  
8 the Public Service Board in Vermont over the issue of  
9 their not moving fast enough as far as Entergy is  
10 concerned in terms of approving backup generators for  
11 the reactor even though at this point the State of  
12 Vermont has not issued and the Public Service Board  
13 has not issued Entergy a certificate of public good  
14 to, in fact, continue to operate in the state. And  
15 the Public Service Board has, in fact, ruled that  
16 Entergy is operating illegally at this point because  
17 it has refueled twice and has new fuel on site which  
18 is a violation of its original contract. It did  
19 receive basically a stay from District Court to  
20 continue to operate, but the state holds it in  
21 violation.

22 It also has, as far as we know, no long-  
23 term power contracts with -- certainly not with the  
24 State of Vermont. It has none now and what it may  
25 have in other states like Massachusetts as far as we

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1 know it's over by 2014.

2 It has also appealed to the Vermont State  
3 Supreme Court to, in fact, eviscerate the Public  
4 Service Board so that the Vermont Public Service  
5 Board can issue the certificate of public good to  
6 allow it to operate.

7 There is an endless series of issues with  
8 Entergy and it's violating its contract. It was  
9 found to have repeatedly misrepresented, under oath,  
10 before the Public Service Board questions about  
11 underground piping at the site that were leaking.  
12 There are serious questions about whether it will  
13 receive a certificate of public good and whether it  
14 will then go to Court again.

15 I just want to give this then, here is  
16 this adversarial relationship in which Entergy has  
17 agreed if it didn't have a certificate of public good  
18 when it needed to renew it, if it didn't have one it  
19 would shut the reactor and in fact, begin  
20 decommissioning activities. It has not done so.

21 You know, when Entergy bought the reactor  
22 for about \$200 million it was ostensibly worth about  
23 \$500 million. It's now worth about \$160 million.  
24 The condenser has to be replaced in 2016 and Entergy  
25 has gotten the NRC to delay this replacement.

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1 Vermont Yankee has the oldest operating condenser in  
2 the country. Of course, it's understandable why  
3 Entergy wants to do this. The condenser replacement  
4 may cost more than the reactor is worth by that  
5 point.

6 Originally the taxes that Entergy was  
7 paying was \$4 million a year. The state has raised  
8 that to up to \$12 million a year and the estimates  
9 that UBS has given has been on the basis of \$4  
10 million, but the state believes and in fact, it was  
11 ruled in favor of the state that Entergy has to pay  
12 the increased taxes.

13 In terms of this legislative session  
14 there is the Red Cross Bill that will pass the  
15 legislature which will require Entergy to come up  
16 with \$700,000 to create sheltering post-Fukushima in  
17 the State of Vermont. There will also be legislation  
18 that has already begun the process of going through  
19 which will go into the next legislative session where  
20 there is greenfield legislation. That will be \$40  
21 million. And since the Public Service Board took  
22 testimony that the cleanup of the Vermont Yankee site  
23 for non-radiological contamination could come to over  
24 \$94 million, their main threat will be legislation  
25 around those issues because there are real questions

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1 about Entergy's ability to follow through with its  
2 contract.

3 There is also the potential that it will  
4 be stopped from thermally polluting the Connecticut  
5 River. It is estimated that this will be a sizable  
6 increase in terms of Entergy's bottom line in terms  
7 of operating the reactor.

8 All of these issues impact on Entergy's  
9 bottom line and impact on our safety. There is, of  
10 course, a struggle in all of this because we can't  
11 come -- the state process in one sense has been far  
12 more transparent than anything that has taken place  
13 with the Nuclear Regulatory Commission. Chris  
14 Williams is going to talk about an endless series of  
15 questions that raise serious concerns about Entergy's  
16 systemic mismanagement with one problem after another  
17 where Entergy isn't following procedures, where  
18 Entergy appears to be cutting corners, and in many  
19 ways it's understandable why that would happen.

20 I want to focus for one minute on the  
21 whole notion of the capacity factor, the notion that  
22 Entergy's reactors are operating at such a high  
23 capacity factor because they need that capacity  
24 factor that high in this case not even to break even  
25 any more, but to limit their losses. Well, that need

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1 for that high a capacity factor is in direct conflict  
2 with the issues of health and safety.

3 And Jessica raised a very clear  
4 understanding about how they come together in terms  
5 of what is the most important issue to the  
6 corporation as opposed to what is the most important  
7 issue to the public and we can hope to the regulator.

8 Certainly what we're asking you to do is exercise a  
9 kind of precautionary principle that sees this  
10 corporation is in a lot of trouble, a lot of trouble,  
11 financial instability. And the potential for there  
12 to be serious consequences at any of these three  
13 sites is very real. It hasn't happened yet. But it  
14 can and we are asking you to take the action to  
15 ensure that it won't. Thank you.

16 FACILITATOR OLMSTEAD: I just want to  
17 interject again about eight minutes left in your  
18 time. I just want to make sure we have time for NRC  
19 staff to ask questions and also the licensees or  
20 public.

21 PETITIONER LAMPERT: This is Mary Lampert  
22 and I'll be very quick. Mary Lampert, Director or  
23 Pilgrim Watch.

24 We have joined the petition requesting  
25 that NRC investigate the financial qualifications of

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1 Pilgrim based upon the UBS investment research  
2 recommendation that it be looked at. To us, this is  
3 just common sense that we're asking NRC to exercise  
4 some common sense.

5 Just as for example, if you have five  
6 sons and four carry a genetic mutation, it's only  
7 reasonable to check the fifth brother to ensure they  
8 are not carrying the same defect. We know that you  
9 cannot operate a nuclear reactor, particularly one  
10 designed as flawed as Pilgrim, Vermont and  
11 FitzPatrick, same as those at Fukushima on the cheap.

12 And that is precisely what Entergy is doing. We  
13 have evidence of that fact. Evidence on the series  
14 of workers' strikes last summer here in Plymouth  
15 where they were not given a fair deal to save money  
16 and as a result the workers went on strike and still  
17 had giant chips on their shoulders.

18 Now worker morale obviously is tied very  
19 closely to safety. And there are talks of more  
20 strikes coming up this summer. Pilgrim has had eight  
21 event reports since 2013. ISO, I am told by workers,  
22 is giving them a poor rating although the public  
23 never gets to see those reports regrettably.

24 What we see in these events reports is  
25 poor management and also cutting corners. Currently,

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1 there's an outage. I have asked as have other  
2 citizens asked workers are you doing any big repairs  
3 and it's like hell no. We're doing as little as  
4 possible because management does not want to spend  
5 the money which is not good news.

6 At the same time, NRC is exacerbating the  
7 problem by cowering to industry pressure not to  
8 require safety fixes that would put an economic  
9 burden on the industry. The example was the vote by  
10 the majority of the Commissioners against the  
11 technical staff's recommendations were filtered. And  
12 just within a week's time I have been on calls at  
13 public meetings. One is coming up tomorrow is a  
14 consideration of cumulative effects of regulation  
15 which is code for what are regulations to the  
16 economic problems of the industry.

17 Last week, I was listening and commenting  
18 on an NRC public meeting on the idea to give more  
19 self regulation, if you will, choice to the industry,  
20 to have individual reactors do PRAs, site specific,  
21 so as to rank safety concerns. Obviously, safety  
22 concerns that are expensive would be put at the  
23 bottom. And so we have a vicious circle going on  
24 here. The public clearly deserves and wants NRC to  
25 step up to the plate, do the economic analysis at

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1 Pilgrim and you can see here that there is an eroding  
2 confidence and lack of support in Pilgrim's continued  
3 operations. There are votes going on in town after  
4 town after town on Cape Cod, citizens voting shut it  
5 down.

6 At an NRC April 2nd meeting in Plymouth,  
7 the host community, the selectmen each of the side  
8 looked at NRC and said hey, it's time to change. We  
9 don't trust the NRC and we don't trust Entergy to do  
10 anything to protect our safety. It's a different  
11 game in town. It's an opportunity I'm suggesting to  
12 try to reverse the very bad reputation and most  
13 importantly protect the public's health safety,  
14 property, and environment which after all is the  
15 responsibility of NRC and why you're in business.  
16 Thank you very much.

17 PETITIONER JUDSON: Thank you, Mary. And  
18 I'd like to hand it over to Chris for some discussion  
19 of some plant-specific issues with respect to Vermont  
20 Yankee and then I'll hand it over to Jessica and then  
21 we can entertain questions from NRC staff and the  
22 licensee.

23 FACILITATOR OLMSTEAD: And I've also been  
24 told we aren't losing our line at 2:30 so we can  
25 extend.

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PETITIONER JUDSON: Oh, that's terrific.

PETITIONER WILLIAMS: Thanks, Tim. My name is Chris Williams. I'm calling from Hancock, Vermont. As a resident of Vermont, I'd like to briefly share my concerns regarding the financial fitness of Entergy Corporation and its ability to maintain and operate the Vermont Yankee Nuclear Power Station.

Several years ago we witnessed the collapse of a cooling tower at Vermont Yankee. At the time, I and others had to wonder if a lack of maintenance on the nonradiological side of the plant resulted in such a catastrophic equipment failure, what's going on inside the reactor building? Those questions remain and my concern is further amplified by several subsequent circumstances. They are, number one, repeated statements by Entergy management that Vermont Yankee is a marginal financial performer in their fleet. Two, company officials misled Vermont state regulators while under oath regarding the status of plant systems which may have a significant cost effect on final decommissioning expenses. Three, Vermont Yankee has costly equipment replacement plans on the near-term horizon. Four, for more than a year the company has not secured long

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1 term power contracts for the output of the plant that  
2 the public is aware of.

3 Entergy made a large wager when it adopts  
4 its nuclear merchant business plan in the 1990s. The  
5 management bet that buying a fleet of aging, high-  
6 maintenance reactors at rock-bottom prices would  
7 allow for competitive power sales in high-rate  
8 locations. And while that strategy might have worked  
9 for a limited time, the company is now saddled with  
10 an aging, expensive fleet facing enormous price  
11 competition from other generation sources. So the  
12 question is can the company afford the burden of a  
13 business plan that has gone off the tracks? Thanks  
14 for your attention.

15 PETITIONER JUDSON: Great. Thank you,  
16 Chris. And I'd like to now also hand it off to  
17 Jessica to talk about any specific issues with the  
18 FitzPatrick reactor.

19 Jessica? Jessica are you unmuted?

20 PETITIONER AZULAY: Hello?

21 PETITIONER JUDSON: Hi. We can hear you.

22 PETITIONER AZULAY: So Alliance for a  
23 Green Economy performs a watchdog role over  
24 FitzPatrick and in 2012 we saw the FitzPatrick have  
25 two consecutive emergency shutdowns in November, the

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1 second of which was a result of a fire that burned  
2 for hours and ruined the plant's main transformer.

3 Before those emergencies, Entergy has  
4 been bragging of breaker-to-breaker service because  
5 the reactor operated between fueling outages without  
6 going offline. However, when we took a look at the  
7 NRC data last year, we noticed that while the reactor  
8 never powered down completely during that period it  
9 was plagued with problems causing an above average  
10 number of unplanned power changes.

11 In 2011, FitzPatrick had 3.2 unplanned  
12 power changes per 7,000 hours of operation which puts  
13 it at 4 times the industry average. And we've seen  
14 this get worse. At the end of 2012, FitzPatrick's  
15 rolling average was 6.4 unplanned power changes per  
16 7,000 hours and just in the last -- this last  
17 quarter, the first quarter of 2013, we saw it jump to  
18 7.4 per 7,000 hours. So we're seeing this get worse,  
19 not better, and we see FitzPatrick continuing to be  
20 an industry outlier in this performance indicator  
21 which has triggered increased NRC oversight.

22 What we think is important about these  
23 unplanned power changes from what we understand is  
24 that many of them stem from a deficiency with the  
25 plant's main condenser which is an expensive piece of

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1 equipment that Entergy is likely loathe to replace  
2 given the uncertainty about the plant's future and  
3 how expensive it is and this is exactly the time of  
4 deferred maintenance the financial qualifications  
5 requirement should be helping us avoid.

6 Other expensive upgrades are necessary  
7 for FitzPatrick to approach even a baseline of  
8 safety. As a Mark I boiling water reactor,  
9 FitzPatrick is subject to new NRC orders regarding  
10 hardened vents and complying with the orders may  
11 prove especially costly for FitzPatrick because  
12 unlike other Mark Is in the U.S. the plant does not  
13 have a direct torus hardened vent. Instead, it has a  
14 legacy vent path meant to release pressure and  
15 radiation from an accident at ground level by blowing  
16 the doors off the standby gas treatment building.

17 The post-Fukushima Inspection Report for  
18 FitzPatrick noted the potential for hydrogen  
19 explosion in the vent paths that were used. So this  
20 presents a particularly dangerous situation which is  
21 the subject of another pending 2.206 petition we're  
22 involved in and it should be addressed immediately.

23 In a post-Fukushima environment we would  
24 hope that Entergy would be acting quickly to remedy  
25 this explosion-prone vent path, but we see no such

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1 action. I cannot stress enough how concerned we are  
2 about the potential burn accident at FitzPatrick. We  
3 have an aging reactor with an increasing number of  
4 equipment problems. The reactor has a faulty  
5 containment design and no reliable vent to preserve  
6 containment integrity in the case of an accident.  
7 This is dry tinder for a catastrophic accident that  
8 could radiologically kill our environment, our  
9 economy, and many members of our community.

10 So we're here asking you today to not let  
11 Entergy's financial woes be the match that starts  
12 this fire at FitzPatrick. Thank you.

13 PETITIONER JUDSON: Great. Thank you,  
14 Jessica. So I'm just going to take a couple of  
15 minutes to wrap up our presentation today. One of  
16 the issues that I mentioned, that I alluded to before  
17 was the fleet-wide nature of the problem that Entergy  
18 is facing. And that goes beyond specifically the  
19 merchant power division which has been the subject of  
20 this discussion. The investment community, as a  
21 whole, has been steadily downgrading Entergy's bond  
22 rating or Entergy's stock ratings over the last year.

23 And in fact, we've seen a marked decrease in their  
24 share price and this whole issue of whether Entergy  
25 is going to continue to see further stock declines

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1 based on a decision to close these reactors really  
2 amplifies the concern that Entergy isn't in a  
3 condition to prioritize making a safety decision here  
4 to close these reactors, that this is really  
5 incumbent upon the NRC to step in.

6 But what's also clear from UBS' analyses  
7 is that -- and UBS mentions this -- is that Entergy -  
8 - while Entergy's wholesale power business is  
9 suffering as a result of the poor operations of these  
10 plants which is creating, as we've indicated, a lot  
11 of pressure on Entergy to uprate them outside of  
12 regulatory compliance, but that in fact that's being  
13 mitigated to some extent by the profitability of one  
14 of its assets which is the Indian Point Nuclear Power  
15 Plant which, as UBS notes, is an entirely different  
16 electricity market. It's operating very profitably  
17 at this point. And as we note in a supplement to our  
18 petition, has been the subject of a report by a New  
19 York State Assembly Member who commissioned an  
20 analysis of Indian Point's finances which found that,  
21 in fact, Indian Point is generating significant  
22 profits at this point in the order of hundreds of  
23 millions a year which Entergy is essentially using in  
24 order to float the operations of these reactors which  
25 are distressed assets.

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1           Now with respect to this, we note that  
2           Entergy's interest for shareholders is to maximize  
3           its profits. It's not enough for Entergy that it's  
4           making money at Indian Point that it could use in a  
5           zero sum approach to managing its other reactors that  
6           are not profitable, that given the analysis that the  
7           investment community has arrived at which is  
8           essentially that its wholesale power business is  
9           really in trouble, that it only really has one  
10          valuable asset which is Indian Point, but these other  
11          assets are actually down the rest of the company. It  
12          puts tremendous pressure on Entergy's management of  
13          all of these assets including Indian Point to  
14          maintain high capacity factors to minimize  
15          maintenance cost, to minimize maintenance outages,  
16          that in fact, the financial qualifications problems  
17          that Entergy faces at FitzPatrick or Vermont Yankee  
18          and possibly Pilgrim can also spread fleetwide to  
19          affect its other reactors that are within the same  
20          corporate division. So that, in fact, this situation  
21          shouldn't persist, could begin to spill over into  
22          Entergy's operations of other reactors. It's  
23          actually incumbent upon NRC to act here and cauterize  
24          the situation as quickly as possible

25               In addition, what I'm sure the NRC will

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1 hear from Entergy is an objection to NRC interfering  
2 in their corporate decisions about their assets and  
3 in imposing undue regulatory burden. We actually  
4 note that this is the situation in which NRC acting  
5 and intervening without respect to whether it's NRC's  
6 job to protect the finances of a company would  
7 actually be a benefit to Entergy to step in in this  
8 way.

9 Entergy is under the status quo going  
10 forward, apparently intending to use its surplus  
11 profits from Indian Point in order to support the  
12 operations of these plants that are no longer  
13 financially qualified to operate.

14 Should NRC step in and enforce the  
15 regulations or if NRC were to cease operations at  
16 FitzPatrick and Vermont Yankee and potentially  
17 Pilgrim if that's warranted, and all these reactors  
18 under NRC's current decommissioning funding reports,  
19 have surplus funds for decommissioning, that there's  
20 no reason to believe that there's going to be an  
21 increase liability on Entergy as a result of closing  
22 these plants. In fact, Entergy could move into a  
23 decommissioning mode at these plants, actually  
24 minimize job losses to the work forces and begin the  
25 decommissioning process that's already funded by rate

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1 payer contributions that were made years ago. And  
2 should there be any decommissioning shortfalls, they  
3 certainly would not be on the order of the operating  
4 cash shortfalls that are projected to be occurring  
5 over the next -- over the foreseeable future  
6 essentially, that essentially Entergy could close  
7 these reactors and whatever surplus funds from Indian  
8 Point were going to be used to float the operations  
9 of these plants, could be applied to decommissioning  
10 if necessary. There would be no undue regulatory  
11 burden imposed by NRC for this action, but it would  
12 actually be very much in the interest of public  
13 health and safety and would have a collateral benefit  
14 to Entergy held as a corporation regardless of  
15 whether Entergy were to resist such a decision.

16 So with that, we'd like to conclude our  
17 presentation and thank again NRC for considering this  
18 petition and we look forward to your questions.

19 CHAIRPERSON EVANS: Thank you, Mr.  
20 Judson. At this time, since it's a public meeting,  
21 I'd like to remind everyone of the need to refrain  
22 from discussing any sensitive or proprietary  
23 information during the remainder of the meeting.

24 Does the staff here at NRC Headquarters  
25 have any questions for the Petitioners?

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1 MS. SIMMONS: I have some questions and  
2 then I'll turn it over to my colleagues who are also  
3 financial analysts. I'm Anneliese Simmons with NRR.

4 First, I want to thank you for your  
5 petition. I think it may be the first petition that  
6 deals with merchant plants and financial  
7 qualifications, at least to my knowledge, and that's  
8 a very timely subject. So I want to thank you for  
9 providing that and the supplement.

10 You brought up quite a number of issues  
11 embedded in the petition and so I just want to ask a  
12 couple of questions about that.

13 PETITIONER JUDSON: Sure.

14 MS. SIMMONS: And I want to be very clear  
15 about the staff's limitations in terms of pursuing an  
16 enforcement action related to financial  
17 qualification. You're probably somewhat familiar  
18 with all of the experience and case law regarding  
19 financial qualification and one of the challenges is  
20 that it's difficult to make the case that financial  
21 distress has a direct impact on safety. I don't  
22 believe that that has ever been an enforcement action  
23 that's been taken by the NRC.

24 And so one of the challenges we have is  
25 and you spoke about that, Mr. Gunter, about drawing

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1 up that nexus to safety. I just want to say that is  
2 a challenge that we have in terms of addressing this  
3 and other issues.

4 Your analysis, a lot of the petition is  
5 based on the analysis done by UBS. They are, as  
6 folks probably know, a Swiss banking and investment  
7 firm. Of course, they did a very comprehensive  
8 analysis, but it is -- because the staff has to  
9 depend on direct, I would say, probably more direct  
10 statements by licensees or first level citations as  
11 opposed to someone else's analysis because the staff  
12 has to perform an independent analysis, I wondered if  
13 you had any citations or references to some of the  
14 supporting numbers that were in the UBS analysis?

15 PETITIONER JUDSON: Well, I think as you  
16 know, Entergy's financial performance metrics,  
17 especially with regard to specific assets, are  
18 proprietary information. They aren't generally made  
19 public.

20 What we saw in the advent of these  
21 reports from UBS was actually through the investment  
22 community and Entergy's relationship with the  
23 investment community. Some opening up of the plant  
24 specific, you know, the financial situation. So we  
25 would welcome NRC really prying open that can through

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1 its powers under 50.33(f)(5) to confirm the basis of  
2 UBS' analysis. And we wouldn't expect you to do any  
3 less.

4 But it seems clear to us from the  
5 analysis that UBS provided, especially given that it  
6 was so non-conservative in terms of the plant-  
7 performance projections and the fact that the major  
8 maintenance expenses from these reactors didn't seem  
9 to be included that this really seems to be a pretty  
10 clear-cut case, especially given what we know about  
11 the power markets in New York and New England which  
12 we documented in our petition that fall so  
13 precipitously below the original financial  
14 qualifications projections that Entergy submitted.

15 MS. SIMMONS: And I want to specifically  
16 ask about that. So did the power projections that  
17 you presented in your petition, were they based on  
18 again the UBS analysis or were they based on, for  
19 example, the Energy Information Administration or  
20 other filings?

21 PETITIONER JUDSON: The market price  
22 analysis that we did in our initial petition was from  
23 hourly day-ahead market price data downloaded from  
24 the New England and New York ISOs.

25 MS. SIMMONS: Okay.

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1           PETITIONER JUDSON:   And those were for  
2   every hour within those years and then averaged.  
3   Because these are base load plants, there's no  
4   revenue projection to be based on an average of those  
5   hourly prices.

6           MS. SIMMONS:       The next question is  
7   regarding the end of the PPA for FitzPatrick. I  
8   couldn't find a direct reference to where they have  
9   made a filing to that effect or if that's just  
10   reflected in the UBS analysis.

11          PETITIONER JUDSON:   That's reflected in  
12   the UBS analysis and their initial power purchase  
13   agreement with New York Power --

14          MS. SIMMONS:   So you have -- is there a  
15   citation to the New York --

16          PETITIONER JUDSON:   It was submitted with  
17   their license for application.

18          MS. SIMMONS:   Okay.   Some people would  
19   argue that because Entergy is a diversified company  
20   other components of its business, for example, is  
21   regulated plants provide additional funding that can  
22   be used to cover plants that have a short fall. They  
23   also have other things that guides nuclear power  
24   plants. I just wondered what your thoughts were  
25   about that?

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1                   PETITIONER JUDSON:   Sure, as I mentioned  
2                   with respect -- my concluding comments about the  
3                   dynamic that the UBS points out where they do have  
4                   one asset in their merchant fleet which generates a  
5                   significant amount of profit that is essentially able  
6                   to float basically the rest of the business here.  
7                   This is -- I think this is a flaw when you look at  
8                   the situation.   Entergy is a corporation that is in  
9                   business to maximize profit for its shareholders, so  
10                  its business isn't to use regulated rates in the deep  
11                  South to pay for unprofitable assets in the  
12                  Northeast.   It has -- and this is what UBS' analysis  
13                  points out is that from the standpoint of its  
14                  shareholders which are Entergy's primary obligation,  
15                  it has to maximize its profits.

16                 MS. SIMMONS:       So it would be your  
17                  position that profits from the regulated section of  
18                  Entergy would not carry over?

19                 PETITIONER JUDSON:   It's not relevant to  
20                  how Entergy makes decisions about how it operates  
21                  these plants.   I mean I think as Chris Williams  
22                  pointed out, Entergy has publicly stated that the  
23                  Vermont Yankee is considered a marginal asset within  
24                  its fleet.   This means that Entergy in weighing how  
25                  it manages its assets is looking at these assets as

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1 problems.

2 And as we laid out in our presentation,  
3 Entergy is basically in sort of a triage situation of  
4 managing these distressed assets that, in fact, it is  
5 in a position where it is trying to minimize its  
6 outage time to minimize its maintenance cost while it  
7 waits for some circumstance to change, a circumstance  
8 that as we lay out, there's no reasonable expectation  
9 that such a thing would occur, especially within the  
10 foreseeable future which is, in fact, which is in  
11 comport with UBS' analysis and in fact, its  
12 anticipation that Entergy in making a rational  
13 decision about these plants may decide to close them.

14 PETITIONER KATZ: This is Deb Katz.  
15 Entergy has also made clear in the press in Vermont  
16 that it sees Vermont Yankee as a completely separate  
17 entity from the rest of Entergy Nuclear and that  
18 entity stands on its own. So it is not taking the  
19 position where it was going to provide financial  
20 help, at least that's what it said publicly.

21 PETITIONER LAMPERT: -- to say a limited  
22 liability company, they were all set up --

23 CHAIRPERSON EVANS: Who was that?

24 PETITIONER JUDSON: That was Mary  
25 Lampert.

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1 MS. SIMMONS: How would you all address  
2 the argument that performance issues and safety  
3 issues will be captured by inspection through the  
4 ROP?

5 PETITIONER JUDSON: Well, as we  
6 understand the NRC's approach to safety regulation  
7 and enforcement, what's required in evaluating safety  
8 problems is a root cause analysis and given the plant  
9 performance issues we've seen particularly at  
10 FitzPatrick, but at all three of these reactors as we  
11 enumerated in our presentation, there is sufficient  
12 reason to believe that the financial qualifications  
13 are a root cause of what's been happening recently at  
14 those plants. And given NRC's regulatory approach we  
15 feel that this is sort of a natural sort of extension  
16 to take to looking at financial qualifications as a  
17 root cause of both the recent issues of the plants,  
18 but also we should reasonably anticipate that those  
19 could become even more acute dynamic in the future.

20 MS. SIMMONS: I think I just have one  
21 more question. In your petition, there's something  
22 called the NYPA value sharing between Fitz and Indian  
23 Point?

24 PETITIONER JUDSON: This is an aspect of  
25 power purchase agreement between Entergy and the New

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1 York Power Authority was a value-sharing agreement  
2 that imposed a liability on Entergy and it may yet  
3 impose it going forward to essentially sort of share  
4 some of its revenue with our authority related to the  
5 FitzPatrick.

6 MS. SIMMONS: But now that the  
7 FitzPatrick power purchase agreement is over is that  
8 value sharing authority over?

9 PETITIONER JUDSON: It's shown in UBS'  
10 reports.

11 MS. SIMMONS: Yes, I see it in UBS' page  
12 3.

13 PETITIONER JUDSON: Yes.

14 MS. SIMMONS: I was a little unclear  
15 because they seem to remove it in one analysis and  
16 then include it in another.

17 PETITIONER JUDSON: Our understanding  
18 would be that that should have ended if the power  
19 person had -- but they may have a separate agreement  
20 to that effect.

21 MS. SIMMONS: Okay. Let's see. I think  
22 that those are the questions that I have. I want to  
23 turn it over to my colleagues to see if they have  
24 questions, Jo Ann or Jocelyn?

25 Can I ask one final question? So again,

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1 one of the issues that a lot of our procedures and  
2 policies are around are reacting to performance  
3 indicators. You mentioned something and I would like  
4 your thoughts about those. Financial distress can  
5 often have cumulative impacts, okay, so you might not  
6 necessarily see some sort of immediate reaction or  
7 performance indicator in a plant.

8           Could you just talk a little bit about  
9 how -- what the NRC is to do in those kind of  
10 situations where we see something happening on one  
11 side. We see something in the financial statements,  
12 but we may not see a clear-cut indicator, for  
13 example, in an ROP.

14           PETITIONER JUDSON: Sure. Well, I mean I  
15 think what this situation has brought to light, I  
16 would say on a broader level, the NRC should take a  
17 much more aggressive sort of stance on evaluating the  
18 finances of nuclear plants that are particularly  
19 (2:37:48) the electricity one. I think NRC should be  
20 far more deeply engaged in evaluating the impact of  
21 the electricity markets on reactor safety and  
22 financial qualifications as a general matter going  
23 forward. I think with respect to this particular  
24 situation, what we have is a situation that clearly  
25 indicates that these plants may be very significantly

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1 in violation of financial qualifications standards  
2 and that while we acknowledge that NRC has never  
3 taken enforcement action preemptively around or  
4 proactively on financial qualifications issues, that  
5 we're really in a different ballgame now with the  
6 situation facing Entergy, facing some of Exelon's  
7 plants that warrants a different approach. And  
8 essentially that enables the Agency to act  
9 proactively in this situation.

10 Now that said, I think that with respect  
11 to, like I indicated, taking a more proactive  
12 approach in looking at financial qualifications  
13 especially in deregulation of electricity markets,  
14 that that should always be looked to towards a root  
15 cause analysis of trends with the performance of  
16 these plants. But I think with respect to Vermont  
17 Yankee and FitzPatrick specifically and this is why  
18 we ask for an investigation of Pilgrim, we're clearly  
19 beyond the point where we're just adding it to the  
20 inspection matrix that this is an inadequate  
21 response.

22 MS. SIMMONS: Okay. Thanks.

23 MS. MENSAH: This is Tanya Mensah. I'm a  
24 2.206 Coordinator again. Just to clarify, because I  
25 heard several times you mentioned that you had some

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1 concern about what's happening at Vermont Yankee and  
2 FitzPatrick and possibly Pilgrim expanding to include  
3 other reactors that are owned by Entergy. I just  
4 wanted to clarify. Are you asking the PRB to expand  
5 the scope of this petition or are you expanding the  
6 scope of your petition to say you want to seek  
7 enforcement, you want the NRC to seek enforcement  
8 actions against other reactors that are currently not  
9 listed?

10 PETITIONER JUDSON: No, we are not.

11 MS. MENSAH: Okay.

12 PETITIONER JUDSON: What we're  
13 highlighting is that with respect to especially sort  
14 of this question of sort of how the problems with  
15 these plants relates to Entergy as a whole or at  
16 least its nuclear business that this is really a  
17 problem that needs to be cauterized.

18 PETITIONER JUDSON: Okay, thank you.

19 CHAIRPERSON EVANS: Any other questions?

20 So on the phone from the Region, does staff have any  
21 questions for the Petitioners.

22 MR. MCCARVER: This is Sam McCarver, no  
23 questions.

24 CHAIRPERSON EVANS: Okay, thanks, Sam.

25 So now I'm going to turn the meeting back over to our

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1 facilitator to allow questions from other  
2 participants.

3 FACILITATOR OLMSTEAD: Thank you,  
4 Michele. This is Joan Olmstead. Does any of the  
5 licensee representatives on the phone have any  
6 questions for the Petition Review Board on the 2.206  
7 process or comments on the petition?

8 MR. MANNAI: This is David Mannai from  
9 Entergy Nuclear. We have no questions on the process  
10 or the petition.

11 FACILITATOR OLMSTEAD: Okay, are there  
12 any members of the public that would have questions  
13 for the Petition Review Board on the 2.206 process or  
14 comments on the petition?

15 I'm giving people time to unmute their  
16 phones. Okay, I don't think we have any comments or  
17 questions from the public.

18 Do the Petitioners have any questions for  
19 the Petition Review Board on the 2.206 process?

20 PETITIONER JUDSON: I think we're  
21 familiar with it. We've been through it a number of  
22 times. We want to thank you for allowing us the  
23 extra time and for this opportunity to present our  
24 case. Thanks.

25 PETITIONER GUNTER: This is Paul Gunter.

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1 I would just like to ask for clarification. The  
2 Petitioners will have the opportunity to request  
3 another meeting with the Petition Review Board after  
4 the draft Director's decision is that --

5 FACILITATOR OLMSTEAD: I'll defer to  
6 Michele on that.

7 MR. GUZMAN: This is Rich Guzman. That  
8 is correct. The next step following this meeting is  
9 that the Petition Review Board will get together  
10 internally and determine whether your petition meets  
11 the criteria for review under 2.206. Once we have  
12 the appropriate concurrences from management, I'll  
13 contact you, Mr. Judson, and at that point give you  
14 an opportunity for the second meeting.

15 CHAIRPERSON EVANS: So I'd like to thank  
16 Mr. Judson, Mr. Gunter, and your fellow Petitioners  
17 on the phone for taking the time to provide the NRC  
18 staff with the clarifying information on your  
19 petition.

20 Officially, I'll reiterate a little of  
21 what Rich just said. The PRB does plan to meet  
22 internally within a few weeks to discuss this  
23 information that you've provided in your petition and  
24 as supplemented, to make its initial recommendation  
25 on the petition. Following that meeting, the

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1 petition manager will inform you of the PRB's initial  
2 recommendation to either accept or reject your 2.206  
3 petition for review and in accordance with the  
4 criteria in Management Directive 8.11. So before we  
5 close, does the court reporter need any additional  
6 information for this transcript?

7 With that, the meeting is concluded and  
8 we will be terminating the phone lines. Thank you.

9 (Whereupon, at 2:43 p.m., the conference  
10 call was concluded.)

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