

January 24, 2008

EA-08-006

Mr. Michael A. Balduzzi
Sr. Vice President & COO
Regional Operations, NE
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$650,000, INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3

Dear Mr. Balduzzi:

The U.S. Nuclear Regulatory Commission (NRC) is issuing the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) to Entergy Nuclear Operations, Inc., (Entergy) in light of your continuing failure to implement Orders issued by the NRC on January 31, 2006, (EA-05-190) and July 30, 2007 (EA-07-189). The two Orders, in part, require that Entergy have in place a public alerting system, the Emergency Notification System (ENS), with a backup power system capability. The enclosed Notice proposes the imposition of a civil penalty of \$650,000 for the continuing failure to implement the ENS between April 16, 2007, and the present.

The January 31, 2006, Confirmatory Order, as amended, required implementation of the ENS no later than April 15, 2007. NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$130,000 on April 23, 2007, (EA-07-092) for failure to implement the ENS by April 15, 2007.

The July 30, 2007, Order required implementation by August 24, 2007, since the April 15, 2007, date had not been met. On August 17, 2007, Entergy informed the NRC that the outstanding requirements of the Confirmatory Order, as well as the necessary software and procedure upgrades and training of county personnel, were either completed or would be completed by August 24, 2007, but that it was uncertain if the Federal Emergency Management Agency (FEMA) approval would be obtained by August 24, 2007. Later, on August 23, 2007, Entergy requested NRC to consider modifying the terms of the July 30th Order to accommodate completion of the FEMA review process. NRC's letter dated August 30, 2007, denied Entergy's request since it had not demonstrated good cause, noting: (1) Entergy's proposed August 24, 2007, implementation due date, as described in its May 23, 2007, response to the April 23, 2007, Notice, included contingency time for uncertainties "related to coordinating these additional activities with external organizations," and (2) the August 24, 2007, implementation date already represented a period of more than four months beyond the extended date by which Entergy was to have complied with the terms of the original Confirmatory Order. In addition, NRC issued a Notice of Violation (NOV) on August 30, 2007, (EA-07-212) for the continuing failure to implement the ENS, and informed Entergy that further enforcement action could be taken.

Because of the significant regulatory engagement to date that has been necessary to achieve resolution of this issue and Entergy's inadequate actions in support of FEMA's review for use of the new ENS and inadequate management oversight, the NRC is issuing the enclosed Notice of Violation and Proposed Imposition of a Civil Penalty for the continuing violation, which has been classified at Severity Level III. In view of the actions that Entergy must still take to obtain FEMA's approval, the NRC concluded that Entergy's continuing failure to comply with the Orders significantly undermines the regulatory effectiveness of the NRC with respect to its implementation of section 651(b) of the Energy Policy Act of 2005, PL109-58, 119 Stat. 594. Entergy's failure to implement the new ENS with backup power capability is of significant regulatory concern given the mandate by Congress and the multiple delays in implementing the new ENS since the original date required by the January 31, 2006, Confirmatory Order. Furthermore, the NRC has concluded that the continuing failure to meet the implementation date(s) prescribed by the Orders was and is due to circumstances reasonably within Entergy's control. Based on NRC's monitoring of Entergy's efforts to implement the new ENS and the FEMA review process, NRC has concluded that Entergy has failed to take timely and necessary actions to obtain FEMA's approval of the new ENS so that it could be placed in service as the primary notification system.

Normally, a base civil penalty in the amount of \$65,000 is considered for a Severity Level III violation. However, in recognition of the continuing failure for an extended period of time to comply with NRC Orders, the NRC has decided to exercise discretion to emphasize the importance of prompt compliance with such Orders. Therefore, I have been authorized, after consultation with the Commission, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$650,000 for this Severity Level III violation.

As indicated in the August 30, 2007, NOV, final agency enforcement action in this matter will be taken when Entergy is in compliance with the Orders. NRC will continue to closely monitor the FEMA review process. NRC will inform you by separate correspondence of the results of NRC deliberation on this matter. In determining the final enforcement action, we will consider your due diligence in resolving this matter with FEMA and other relevant appropriate considerations.

You are required to respond to this letter and you should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement actions are necessary to ensure compliance with the regulatory requirements.

The NRC continues to recognize that the existing alert notification system is capable of alerting the general public in the vicinity of the Indian Point station if an emergency condition occurs. However, that system does not meet the requirements of the Act as imposed by the January 31, 2006, Confirmatory Order because it does not have the backup power supply capability.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your responses will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/>; select **About NRC, Organizations & Functions, Office of Enforcement, About Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

Docket Nos. 50-247 and 50-286
License Nos. DPR-26 and DPR-64

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl (attached list)

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your responses will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/>; select **About NRC, Organizations & Functions, Office of Enforcement, About Enforcement**, then **Significant Enforcement Actions**.

Sincerely,
/RA/

Martin J. Virgilio
Deputy Executive Director for Materials, Waste,
Research, State, Tribal, and Compliance Programs
Office of the Executive Director for Operations

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Electronic DISTRIBUTION w/encl:

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LLopez,OE
GVeneziano, OGC
JDyer, NRR
JWiggins, NRR
BBoger, NRR
JLubinski, NRR

MKowal, NRR
JBoska, PM, NRR
JHughey, NRR
MAshley, NRR
RZimmerman, NSIR
WDean, NSIR
MLeach, NSIR
DFurst, NSIR
WBorchardt, NRO
GHolahan, NRO
G. West, OEDO
Enforcement Coordinators RII,
RIII, RIV
EHayden, OPA
HBell, OIG
GCaputo, OI
LTremper, OCFO

DScrenci/NSheehan, RI
ECobey, RI
MCox, RI
PCataldo, RI
KFarrar, RI
DHolody, RI
RSummers, RI
ADeFrancisco, RI
CO'Daniell, RI
R1DRP_Mail
Region I OE Files
SCollins, RI
MDapas, RI
MGamberoni, RI
DLew, RI
JTrapp, RI

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OFFICE	RI/RA	NRR	NSIR	OGC	OE
NAME	SCollins	BBoger for Dyer	RZimmerman	CMarco	CCarpenter
DATE	01/17/08	01/14/08	01/17/08	01/22/08	01/22/08
OFFICE	DEDMRT				
NAME	MVirgilio				
DATE	01/ 22/08				

cc w/encl: Letter to Michael A. Balduzzi, dated: January 24, 2008

G. J. Taylor, Chief Executive Officer, Entergy Operations
M. Kansler, President, Entergy Nuclear Operations, Inc.
J. T. Herron, Senior Vice President for Operations
J. Pollock, Indian Point Site Vice President
Senior Vice President of Engineering and Technical Services
J. DeRoy, Vice President, Operations Support (ENO)
A. Vitale, General Manager Operations
O. Limpas, Vice President, Engineering (ENO)
J. McCann, Director, Nuclear Safety and Licensing (ENO)
C. D. Faison, Manager, Licensing (ENO)
E. Harkness, Director of Oversight (ENO)
P. Conroy, Director, Nuclear Safety Assurance
T. Jones, Manager, Licensing
M. Slobodien, Director, Emergency Planning (ENO)
W. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc.
M. Balboni, Deputy Secretary for Public Safety, State of New York
P. Tonko, President and CEO, New York State Energy Research and Development Authority
J. Spath, New York State Energy Research and Development Authority
P. Eddy, Electric Division, New York State Department of Public Service
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law
D. O'Neill, Mayor, Village of Buchanan
J. G. Testa, Mayor, City of Peekskill
R. Albanese, Four County Coordinator
S. Lousteau, Treasury Department, Entergy Services, Inc.
Chairman, Standing Committee on Energy, NYS Assembly
Chairman, Standing Committee on Environmental Conservation, NYS Assembly
Chairman, Committee on Corporations, Authorities, and Commissions
B. Brandenburg, Assistant General Counsel
Assemblywoman Sandra Galef, NYS Assembly
T. Seckerson, County Clerk, Westchester County Legislature
A. Spano, Westchester County Executive
R. Bondi, Putnam County Executive
C. Vanderhoef, Rockland County Executive
E. A. Diana, Orange County Executive
T. Judson, Central NY Citizens Awareness Network
M. Elie, Citizens Awareness Network
D. Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists
Public Citizen's Critical Mass Energy Project
M. Mariotte, Nuclear Information & Resources Service
F. Zalzman, Pace Law School, Energy Project
L. Puglisi, Supervisor, Town of Cortlandt
Congressman John Hall
Congresswoman Nita Lowey
Senator Hillary Rodham Clinton
Senator Charles Schumer
G. Shapiro, Senator Clinton's Staff
J. Riccio, Greenpeace
P. Musegaas, Riverkeeper, Inc.

M. Kaplowitz, Chairman of County Environment & Health Committee
A. Reynolds, Environmental Advocates
D. Katz, Executive Director, Citizens Awareness Network
K. Coplan, Pace Environmental Litigation Clinic
M. Jacobs, IPSEC
D. C. Poole, PWR SRC Consultant
W. Russell, PWR SRC Consultant
W. DiProfio, PWR SRC Consultant
W. Little, Associate Attorney, NYSDEC
R. Christman, Manager Training and Development
S. Tanzer, The Nuclear Control Institute
M. Greene, Clearwater, Inc.
A. Kremer, New York Affordable Reliable Electricity Alliance (NY Area)
V. Quinn, FEMA Headquarters
S. Kempf, FEMA Region II
R. Thomson, FEMA Region II

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Entergy Nuclear Operations, Inc.
Indian Point Generating Station, Units 2 and 3

Docket Nos. 05000247; 05000286
License Nos. DPR-26 and DPR-64
EA-08-006

A violation of NRC requirements at the Indian Point Generating Station has been identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty is set forth below:

The Energy Policy Act (Act) of 2005, requires in part that "For any licensed nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant, not later than 18 months after enactment of the Act, the Commission shall require that backup power to be available for the emergency notification system of the power plant, including the emergency siren warning system, if the alternating current supply within the 10-mile emergency planning zone of the power plant is lost."

In accordance with the Act, on January 31, 2006, the NRC issued a Confirmatory Order (EA-05-190) to the Indian Point Nuclear Generating Unit Nos. 2 and 3, which required, in part, a backup power system for the Emergency Notification System (ENS). The Confirmatory Order was amended by the NRC on January 23, 2007, extending the implementation date to April 15, 2007.

On July 30, 2007, the NRC issued an Order (EA-07-189) to supplement the requirements of the January 31, 2006, Confirmatory Order, based on Entergy's proposed corrective actions for noncompliance with the Confirmatory Order. The July 30, 2007, Order required, in part, that Entergy shall meet the applicable requirements of state and federal authorities such that the new ENS is declared operable and placed into service as the primary ENS by August 24, 2007.

Contrary to the above, between April 16, 2007, and continuing through this date, Entergy has failed to meet the requirements of the above Orders to implement an ENS with backup power capability. Specifically, Entergy failed to take timely and necessary actions to obtain Federal Emergency Management Agency (FEMA) approval of the new ENS so that it could be placed in service as the primary notification system.

This is a Severity Level III violation.
Civil Penalty - \$650,000

Pursuant to the provisions of 10 CFR 2.201, Entergy Nuclear Operations, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-08-006" and should include: (1) admission or denial of the alleged violation; (2)

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the reasons for the violation, if admitted, and if denied, the basis for denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and, (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response.

Within 30 days of the date of the letter forwarding this Notice, the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty.

Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation; EA-08-006" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to Payment of Civil Penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, and a copy to the NRC Resident Inspector(s) at the facility that is the subject of this Notice.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your

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response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 24th day of January 2008.