

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-247 AND 50-286

LICENSE NOS. DPR-26 AND DPR-64

ENTERGY NUCLEAR OPERATIONS, INC.

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated April 23, 2003, filed by the Honorable Richard Blumenthal, hereinafter referred to as the "Petitioner." The Petition was supplemented on June 3 and October 16, 2003. The Petition concerns the operation of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and 3).

The Petition requested that the Nuclear Regulatory Commission (NRC) take the following actions: (1) order the licensee for IP2 and 3 to conduct a full review of the facility's (a) vulnerabilities and security measures and (b) evacuation plans and, pending such review, suspend operations, revoke the operating license, or take other measures resulting in a temporary shutdown of IP2 and 3; (2) require the licensee to provide information documenting the existing security measures which protect the IP facility against terrorist attacks; (3) immediately modify the IP2 and 3 operating licenses to mandate a defense and security system sufficient to protect the entire facility from a land- or water-based terrorist attack; (4) order the revision of the licensee's Emergency Response Plan and the Radiological Emergency Response Plans for the State of New York and the counties near the plant to account for possible terrorist attacks; and (5) take prompt action to permanently retire the facility if, after conducting a full review of the facility's vulnerabilities, security measures, and evacuation plans, the NRC cannot sufficiently ensure the security of the IP facility against

terrorist threats or cannot ensure the safety of New York and Connecticut citizens in the event of an accident or terrorist attack.

The Petitioner's representative participated in a teleconference with the Petition Review Board (PRB) on June 19, 2003, to discuss the Petition. This teleconference gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition as supplemented. The results of this discussion were considered in the PRB's determination regarding the request for immediate action and in establishing the schedule for reviewing the Petition.

In a letter dated July 3, 2003, the PRB notified the Petitioner that it had determined that his request would be treated pursuant to 10 CFR 2.206 of the Commission's regulations. The July 3, 2003, letter further stated: "In response to your requests for immediate actions contained in items 1, 2, 3, and 4 above, the NRC has, in effect, partially granted your requests."

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to Entergy Nuclear Operations, Inc. (the licensee), for comment on May 17, 2004. The Petitioner responded with comments on June 18, 2004. The comments and the NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the NRC's actions have, in effect, partially granted the Petitioner's request for an immediate review of vulnerabilities, security measures, and evacuation and emergency response planning at IP2 and 3. In addition, the NRC previously issued a Director's Decision on November 18, 2002, which addresses many of the security measures and emergency planning issues raised in this Petition. See *Indian Point*, 56 NRC at 300-311. No further action is deemed necessary to address the Petitioner's request regarding these issues. Subsequent to that November 18, 2002, Director's Decision, the NRC in its April 29, 2003, Orders required IP and other plants to implement additional security measures. Moreover, on July 25, 2003, the Federal Emergency

Management Agency (FEMA) determined that reasonable assurance existed that appropriate protective measures to protect the health and safety of communities around IP2 and 3 can be implemented in the event of a radiological incident at the IP facility. See 68 FR 57702 (October 6, 2003). FEMA reaffirmed this position in a letter to the Petitioner dated June 1, 2004. Consequently, the NRC denies the remainder of the Petitioner's requests. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of *Code of Federal Regulations* (10 CFR) Section 2.206 (DD-04-03), the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the Decision unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 17th day of August 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation