

June 27, 2005

Mr. Paul Gunter
Nuclear Information and Resource Service
1421 16th Street NW., Suite 404
Washington, DC 20036

Dear Mr. Gunter:

Your petition dated May 12, 2005, submitted on behalf of Nuclear Information and Resource Service, Citizens Awareness Network, Indian Point Safe Energy Coalition, North Carolina Waste Awareness and Reduction Network, Alliance for Affordable Energy, and Blue Ridge Environmental Defense League, and addressed to Mr. Luis A. Reyes, Executive Director for Operations of the Nuclear Regulatory Commission (NRC or Commission), has been referred to me pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206, of the Commission's regulations.

Your petition requested that the NRC engage emergency enforcement actions to modify and/or suspend operating licenses for Shearon Harris Nuclear Power Station Unit 1, H. B. Robinson Unit 2, McGuire Units 1 and 2, Catawba Units 1 and 2, Ginna, FitzPatrick, Indian Point Units 2 and 3, Vermont Yankee, Waterford Unit 3, and Arkansas Nuclear One Units 1 and 2 with regard to the potential violations of NRC regulations for fire protection under 10 CFR Part 50. Specifically, the petition requested emergency enforcement under 2.206 to include the following actions by the Commission:

- 1) Collect information through generic communication with nuclear industry and specifically with the named reactor sites to determine the extent of condition of the inoperable fire barriers; including the requirement that the licensees conduct a full inventory of the type of Hemyc/MT to include the amount in linear and square footage, its specific applications, and the identification of safe shutdown systems which are currently unprotected by the non-compliance and an assessment of the safety significance of each application;
- 2) the communication should require, at minimum, that the above named sites provide justification for operation in non-compliance with all applicable fire protection regulations; and
- 3) with the determination that any and/or all of the above mentioned sites are operating in an unanalyzed condition and/or that assurance of public health and safety is degraded, promptly order a suspension of the license or a power reduction of the affected reactors until such time as it can be demonstrated that the licensees are operating in conformance with all other applicable fire protection regulations.

As a basis for your request, your petition cited a meeting on April 29, 2005, held by NRC with all stakeholders to discuss the performance of 1-hour (Hemyc) and 3-hour (MT) fire barriers for Electrical Raceways during full scale fire testing. In that meeting the NRC staff informed all stakeholders that the Hemyc/MT electrical raceway fire barrier system (ERFBS) failed to protect

electrical cables for 1 hour/3 hours in fire tests that were performed to the American Society of Testing and Materials (ASTM) Standard E 119. Your request was based on the following conclusions made by you: (1) The same Hemyc/MT fire barrier wrap systems as installed in the above nuclear plants fail to assure the protection of the control room operations for achieving safe shut down of the reactor in the event of a significant fire, (2) NRC has not quantified the full extent of the amount of Hemyc/MT fire barrier material in terms of linear and/or square footage deployed per fire protection regulation, and NRC has not determined the safety significance of this deployment for safe shutdown systems that are not currently protected by these fire barriers, and (3) you believe that above nuclear power stations are operating in violation of NRC fire protection requirements and in an unanalyzed condition resulting in a degradation of defense-in-depth fire protection and safe shut down in the event of a significant fire.

By teleconference on June 1, 2005, you provided information to the NRC's Petition Review Board (PRB) as further explanation and support for your petition. The transcript of this teleconference is available in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML051640452.

During the teleconference, you also requested that this petition be modified to consider this fire barrier material in context of an overall picture of the extent of condition for fire barrier protection under III. G.2 (i.e., not just the Hemyc/MT ERFBS). As a basis for this request, you stated that you don't believe it is justifiable for NRC or industry to wait on a potential ruling with regard to operator manual action.

On June 1, 2005, following the teleconference, the PRB convened to evaluate whether your petition should be reviewed under the 10 CFR 2.206 process. The NRC staff responsible for plant fire protection participated in the discussion. Based on the PRB's recommendation, I have decided to accept your request for review under 10 CFR 2.206.

Regarding your request that the NRC include other fire barrier issues beyond the Hemyc/MT ERFBS, you did not provide adequate information to justify expanding the scope of the review. The NRC is addressing other issues as appropriate under separate correspondence with all nuclear plants.

Regarding your request for emergency enforcement, the NRC has already determined that immediate action was not necessary. When the Hemyc test results became available, the staff examined whether there was an immediate and significant risk to safety. Because fire detection, prevention, and suppression measures are already in place to minimize both the probability of occurrence and consequences of a fire that could prevent the performance of safe shutdown functions, the staff concluded that continued plant operation while corrective actions are implemented will not pose an undue risk to public health and safety. In addition, the NRC staff has informally confirmed that fire watches have been implemented at affected plants as a compensatory measure until the corrective actions are completed. Guidance regarding resolution of nonconforming or degraded conditions, including taking compensatory measures until corrective actions are completed, is discussed in Generic Letter 91-18, Revision 1, "Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions."

Mr. Paul Gunter

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On June 23, 2005, the NRC staff notified you that, based on the recommendations of the PRB, your request for immediate action and your request to expand the scope to cover other fire barriers issues were denied.

Your petition is being reviewed by the Division of Licensing Project Management within the Office of Nuclear Reactor Regulation. I have assigned Chandu Patel to be the petition manager for your petition. Mr. Patel can be reached at 301-415-3025. As provided by 10 CFR 2.206, we will take action on your request within a reasonable time. For your information, I have enclosed a copy of the notice that is being filed with the Office of the Federal Register for publication regarding your petition. Additionally, Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," and the associated brochure NUREG/BR-0200, "Public Petition Process," prepared by the NRC Office of Public Affairs are available in ADAMS under Accession Nos. ML041770328 and ML013600445.

Sincerely,

/RA/

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

Docket Nos. 50-244, 50-247, 50-271, 50-286,
50-313, 50-333, 50-368, 50-369, 50-370,
50-382, 50-400, 50-413, 50-414, and 50-261

Enclosure: *Federal Register* Notice

cc w/encls: Licensees (w/copy of incoming 2.206 request)
See next page

Mr. Paul Gunter

-3-

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Your petition is being reviewed by the Division of Licensing Project Management within the Office of Nuclear Reactor Regulation. I have assigned Chandu Patel to be the petition manager for your petition. Mr. Patel can be reached at 301-415-3025. As provided by 10 CFR 2.206, we will take action on your request within a reasonable time. For your information, I have enclosed a copy of the notice that is being filed with the Office of the Federal Register for publication regarding your petition. Additionally, Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," and the associated brochure NUREG/BR-0200, "Public Petition Process," prepared by the NRC Office of Public Affairs are available in ADAMS under Accession Nos. ML041770328 and ML013600445.

Sincerely,

/RA/

J. E. Dyer, Director
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Docket Nos. 50-244, 50-247, 50-271, 50-286,
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50-382, 50-400, 50-413, 50-414, and 50-261

Enclosure: *Federal Register* Notice

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NRR-106

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DATE	6/21/05	6/21/05	6/22/05	6/22/05	6/23/05	6/25/05

OFFICIAL RECORD COPY

SUBJECT: PAUL GUNTER, THE NUCLEAR INFORMATION AND RESOURCE SERVICE, LTR DATED MAY 12, 2005, RE: 2.206 - REQUEST FOR EMERGENCY ENFORCEMENT ACTION UNDER 2.206 TO ADDRESS INOPERABLE HEMYC/MT FIRE PROTECTION SYSTEMS AT SHEARON HARRIS, H.B ROBINSON...

Dated: June 27, 2005

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CAROLINA POWER AND LIGHT COMPANY

DUKE ENERGY CORPORATION

ENTERGY NUCLEAR OPERATIONS, INC.

R. E. GINNA NUCLEAR POWER PLANT, LLC

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated May 12, 2005, Mr. Paul Gunter, on behalf of Nuclear Information and Resource Service, Citizens Awareness Network (CAN), Indian Point Safe Energy Coalition, North Carolina Waste Awareness and Reduction Network (NCWARN), Alliance for Affordable Energy, and Blue Ridge Environmental Defense League (the Petitioners), has requested that the NRC engage emergency enforcement actions to modify and/or suspend operating licenses for Shearon Harris Nuclear Power Station Unit 1, Docket No. 50-400, License No. NPF-63; H. B. Robinson Unit 2, Docket No. 50-261, License No. DPR-23; McGuire Units 1 and 2, Docket No. 50-369, License No. NPF-9; Catawba Units 1 and 2, Docket Nos. 50-413 and 50-414, License Nos. NPF-35 and NPF-52; Ginna, Docket No. 50-244, License No. DPR-18; James A. FitzPatrick, Docket No. 50-333, License No. DPR-59; Indian Point Units 2 and 3, Docket Nos. 50-247 and 50-286, License Nos. DPR-26 and DPR-64; Vermont Yankee, Docket No. 50-271, License No. DPR-28; Waterford Unit 3, Docket No. 50-382, License No. NPF-38; and Arkansas Nuclear One Units 1 and 2, Docket No. 50-313 and 50-368, License No. DPR-51 and NPF-6, with regard to potential violations of NRC regulations for fire protection under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50. Specifically, the petition requested emergency enforcement under 10 CFR 2.206 to include following actions by the Commission:

- 1) Collect information through generic communication with nuclear industry and specifically with the named reactor sites to determine the extent of condition of the inoperable fire barriers; including the requirement that the licensees conduct a full inventory of the type Hemyc/MT to include the amount in linear and square footage, its specific applications, and the identification of safe shutdown systems which are currently unprotected by the noncompliance and an assessment of the safety significance of each application;
- 2) the communication should require, at minimum that the above named sites provide justification for operation in non-compliance with all applicable fire protection regulations; and
- 3) with the determination that any and/or all of the above mentioned sites are operating in unanalyzed condition and/or that assurance of public health and safety is degraded, promptly order a suspension of the license or a power reduction of the affected reactors until such time as it can be demonstrated that the licensees are operating in conformance with all other applicable fire protection regulations.

The request is being treated pursuant to 10 CFR 2.206, of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. Mr. Paul Gunter, as Director of the Reactor Watchdog Project for Nuclear Information and Resource Service, Debbie Katz of CAN, and Jim Warren of NCWARN, participated in a telephone conference call with the NRC's Petition Review Board (PRB) on June 1, 2005, to discuss the petition. The results of that discussion were considered in the PRB's determination regarding the petitioner's request for action and in establishing the schedule for the review of the petition. During the June 1, 2005, PRB conference call, the petitioners requested that the NRC consider other fire barrier issues beyond the Hemyc electric raceway fire barrier system.

This request will not be accepted under the 2.206 process because the petitioner did not provide adequate information to justify expanding the scope of the review.

A copy of the petition and the transcript of the telephone conference call are available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the NRC's Agencywide Documents Access and Management System (ADAMS), Public Electronic Reading Room, on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession Nos. ML051440209 and ML051640452). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

J. E. Dyer, Director
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Dated at Rockville, Maryland
This 27th day of June 2005.

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