

EDO Principal Correspondence Control

FROM: DUE: / / EDO CONTROL: G20070634  
DOC DT: 08/30/07  
FINAL REPLY:

Susan Shapiro  
Friends United for Sustainable Energy (FUSE)

TO:

Chairman Klein/NRR

FOR SIGNATURE OF : \*\* GRN \*\* CRC NO: 07-0601

DESC:

Indian Point/Entergy Nuclear - Notification of  
Meeting/Combined License Renewal Application/  
Transfer of Facility Operating Licenses  
(EDATS: SECY-2007-0321)

ROUTING:

Reyes  
Virgilio  
Kane  
Ash  
Ordaz  
Cyr/Burns  
Collins, RI

DATE: 09/13/07

ASSIGNED TO: CONTACT:  
NRR Dyer

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

# EDATS

Electronic Document and Action Tracking System



**EDATS Number:** SECY-2007-0321

**Source:** SECY

## General Information

**Assigned To:** NRR

**OEDO Due Date:** NONE

**Other Assignees:**

**SECY Due Date:** NONE

**Subject:** Indian Point/Entergy Nuclear - Notification of Meeting/Combined License Renewal Application/Transfer of Facility Operating Licenses

**Description:**

**CC Routing:** Region I

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

## Other Information

**Cross Reference Number:** G20070634, LTR-07-0601

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**Roadmap Item:** NO

## Process Information

**Action Type:** Appropriate Action

**Priority:** Medium

**Signature Level:** No Signature Required

**Sensitivity:** None

**Urgency:** NO

**OEDO Concurrence:** NO

**OCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:** For Appropriate Action.

## Document Information

**Originator Name:** Susan Shapiro et al.,

**Date of Incoming:** 8/30/2007

**Originating Organization:** Friends United for Sustainable Energy (FUSE)

**Document Received by SECY Date:** 9/12/2007

**Addressee:** Chairman Klein and P. T. Kuo, NRR

**Date Response Requested by Originator:** NONE

**Incoming Task Received:** Letter

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

*Date Printed: Sep 12, 2007 16:25*

**PAPER NUMBER:** LTR-07-0601

**LOGGING DATE:** 09/11/2007

**ACTION OFFICE:** ED/GC

**AUTHOR:** Susan Shapiro

**AFFILIATION:** NY

**ADDRESSEE:** Dale Klein

**SUBJECT:** Environmental Scoping for Indian Point meeting for Entergy Nuclear Indian Point 2, LLC and 3, LLC

**ACTION:** Appropriate

**DISTRIBUTION:** Chairman, Comrs, OGC, OCAA, Mike Lesar

**LETTER DATE:** 08/30/2007

**ACKNOWLEDGED** No

**SPECIAL HANDLING:** Made publicly available in ADAMS via EDO/DPC

**NOTES:**

**FILE LOCATION:** ADAMS

**DATE DUE:**

**DATE SIGNED:**

EDO --G20070634

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August 30, 2007

Chairman's Office  
Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Pao-Tsin Kuo, PE  
Director, Division of License Renewal  
Office of Nuclear Reactor Regulation

Objection to Insufficient, Incorrect, and Misleading Notification of  
September 19th, 2007 Environmental Scoping for Indian Point Meeting  
for Entergy Nuclear Indian Point 2, LLC ("IP2 LLC") and Entergy Nuclear  
Indian Point 3, LLC ("IP3 LLC")

Objection to the improper acceptance of combined License Renewal  
Application ("LRA") for two separate LLCs, IP2 LLC and IP3 LLC; and,

Objection to transfers of Facility Operating Licenses Nos. DPR-26 and  
DPR-64 from IP2 LLC and IP3 LLC to Entergy Nuclear Operations, Inc  
(ENO);

Dear Dr. Pao-Tsin Kuo:

Individually and jointly, Friends United for Sustainable Energy (FUSE) and the  
undersigned parties ("Stakeholders") hereby make the following allegations:

**ALLEGATION #1** The Stakeholders object to insufficient, Incorrect, and  
Misleading Notification of September 19th, 2007 Environmental Scoping for  
Indian Point Meeting for Entergy Nuclear Indian Point 2, LLC ("IP2 LLC") and  
Entergy Nuclear Indian Point 3, LLC ("IP3 LLC")

To assure the protection of Stakeholder rights of notice and participation,  
the September 19th, 2007 Environmental Scoping meeting must be canceled  
and rescheduled after proper notification appears in the Federal Registry.

**ALLEGATION #2:** Objection to NRC's improper acceptance of combined LRA for two separate LLCs, IP2 LLC and IP3 LLC; and,

The Stakeholders hereby respectfully object to the NRC's improper acceptance of one combined LRA for two distinct and legally separate LLCs and nuclear plants, IP2 LLC and IP3 LLC. In addition, the Stakeholders, respectfully object to ENO being a party to the LRA, when no direct relationship exists between the licenses and ENO. Therefore, the NRC must stop the relicensing process until IP2LLC and IP3LLC submit separate, corrected LRAs.

**ALLEGATION # 3** The Stakeholders hereby respectfully object to NRC approving ENO's application for indirect transfer of control of Facility Operating Licenses Nos. DPR-26 and DPR-64 from IP2 LLC and IP 3 LLC to ENO in the middle of the LRA review.

#### **BACKGROUND:**

On April 30, 2007 the NRC received License Renewal Application ("LRA") from IP2 LLC and IP3 LLC and (ENO).

On June 16, 2007 FUSE and Green Nuclear Butterfly filed a formal petitions for rulemaking (PRM under 10 CFR 2.802, 2.202, 2.206) seeking to have Entergy's License Renewal Application for IP2 LLC, and IP3 LLC, dismissed immediately for being defacto defective, inadequate, invalid and improperly filed application because it co-mingled and joined LRAs for two very unique and distinct reactors, owned by two different limited liability corporations into one LRA.

Despite this on July 25, 2007 NRC accepted the LRA for review of IP2 LLC and IP3 LLC.

On July 30, 2007 ENO submitted an Application for Order Approving Indirect Transfer of Control of Licenses from IP2 LLC and IP3 LLC to. (ENO). This application unexplainably been omitted from Adams.

ENO requested that NRC review this Application on a schedule that will permit the issuance of NRC consent to the indirect transfer of control by December 31, 2007.

Although the NRC has not approved the above application for the indirect transfer of control of the Licenses, on August 10 NRC published a Federal Registry notice, [Federal Register: August 10, 2007 (Volume 72, Number 154)] [Notices] [Page 45075-45076] inaccurately, states that "Entergy Nuclear Operations, Inc. (ENO) has submitted an application for renewal of Facility Operating Licenses Nos. DPR-26 and DPR-64 for an additional 20 years of operation at the Indian Point Nuclear Generating Unit Nos.2 and 3. Indian Point is located in Buchanan, NY."

The licenses DPR-26 and DPR-64 are not held, nor controlled by Entergy Nuclear Operations, Inc., but are instead owned, held and controlled, individually and severally, by IP2 LLC and IP3 LLC, as evidenced by ENO application for indirect transfer of licenses from IP2LLC and IP 3 LLC to ENO.

**ALLEGATION #1 Objection to Insufficient, Incorrect, and Misleading Notification of September 19th, 2007 Environmental Scoping for Indian Point Meeting for Entergy Nuclear Indian Point 2, LLC ("IP2 LLC") and Entergy Nuclear Indian Point 3, LLC ("IP3 LLC")**

The Federal Registry Notice of August 10, 2007 is insufficient, incorrect, , and misleading. On August 10 NRC published a Federal Registry notice, [Federal Register: August 10, 2007 (Volume 72, Number 154)] [ Notices] [Page 45075-45076] inaccurately, states that "Entergy Nuclear Operations, Inc. (ENO) has submitted an application for renewal of Facility Operating Licenses Nos. DPR-26 and DPR-64 for an additional 20 years of operation at the Indian Point Nuclear Generating Unit Nos.2 and 3. Indian Point is located in Buchanan, NY."

The licenses DPR-26 and DPR-64 are not held, nor controlled by Entergy Nuclear Operations, Inc., but are instead owned, held and controlled, individually and severally, by IP2 LLC and IP3 LLC, as evidenced by ENO application for indirect transfer of licenses from IP2LLC and IP 3 LLC to ENO.

The error in the Federal Registry Notice of August 10, 2007, be it deliberate or unintentional, creates a cloud of confusion and uncertainty as relates to proper notification of members of the host community and the general public.

It is imperative that NRC staff properly identify in all official correspondence and Federal Registry publications a true and accurate representation of the facts as relates to the proper identification of their license holders. IP2 LLC and IP3 LLC are the rightful owners and holders the license numbers DPR-26 and DPR-64.

For this reason, the Stakeholders hereby respectfully request that the public meeting scheduled for September 19th in this Federal Registry announcement be cancelled. .It may be rescheduled after it has been properly noticed in the Federal Registry to allow for a fair and equitable opportunity to the Stakeholder community to participate in the license renewal process.

**ALLEGATION #2: Objection to the improper acceptance of combined LRA for two separate LLCs, IP2 LLC and IP3 LLC; and,**

The Stakeholders hereby respectfully object to the NRC's improper acceptance of one combined Licensing Renewal Application ("LRA") for two distinct and legally separate LLCs and nuclear plants, IP2 LLC and IP3 LLC.

The applicant has violated rule 2.309(a) by commingling two applications for license renewals under one filing.

In addition, the Stakeholders, FUSE and the undersigned parties hereby respectfully object ENO as a party to the LRA, when no direct relationship exists between the licenses and ENO. Therefore, the NRC must stop the relicensing process until IP2LLC and IP3LLC submit separate, corrected LRAs.

On July 25, 2007, noticed in the Federal Registry on July 30, 2007, NRC wrongfully accepted the LRA made jointly in the names IP2LLC, IP3LLC and EON, because does not directly control or own the licenses referred to in the LRA, specifically licenses DPR-26 and DPR-64, which are respectively owned and directly controlled, individually and severally by IP2, LLC and IP3, LLC.

IP2 LLC and IP3 LLC are separate, legally formed limited liability corporations. Even though IP2 LLC and IP3 LLC may be indirect wholly owned subsidiaries of ENO, it does not entitle ENO, the right to apply for a license renewals for licenses it does not own and/or directly control.

The commingling of two LRAs into one, created undue confusion and vagueness, as to what components and systems are being referred to. Since IP2 LLC and IP3LLC are unique and individual corporation, operating unique and individual plants, that have histories of separate construction, maintenance and ownership,.

**Co-mingling applications is particularly material to Indian Point 2 and 3 given: separate dockets; separate DPR numbers,; separate owners and License holders for most of their first 30 years of operation; and, separate Architect Engineers.**

The plants have entirely different histories, different design control and configuration management programs. They had and continue to have distinctly different Current Licensing Bases, and have evolved away from each other via a multitude of different design modifications. Unit 3 was on the NRC's watch list during the 90s. Indian Point Unit 2 as been repeatedly in "white status" for the past 10 years. Each plant has its own set of active licensing commitments with respect to their operating license and plant technical specifications.

It is inconsistent and unequitable that the NRC has accepted a single LRA for these two nuclear plants

Therefore, ENO must be removed as a party to the LRA before it can be considered by the NRC. because ENO is not the holder of the licenses. Subsequently, IP2, LLC and IP3, LLC may resubmit separate LRAs for the individual LLCs for acceptance by the NRC.

**ALLEGATION # 3: The Stakeholders hereby respectfully object to NRC approving ENO's application for indirect transfer of control of Facility Operating Licenses Nos. DPR-26 and DPR-64 from IP2 LLC and IP 3 LLC to ENO, in the middle of the LRA review.**

Further, the Stakeholders hereby respectfully object to NRC approving ENO's application for indirect transfer of control of Facility Operating Licenses Nos. DPR-26 and DPR-64 from IP2 LLC and IP 3 LLC to ENO in the middle of the LRA review.

In the case of Indian Point 2, the immediate owner is Entergy Nuclear IP2, LLC. This company is, in turn, owned by Entergy Nuclear Investment Company III, Inc., which is a wholly-owned subsidiary of Entergy Nuclear Holding Company #3 that, in turn is a wholly-owned subsidiary of Entergy Nuclear Holding Company. Entergy Nuclear Holding Company, Inc., is a direct subsidiary of Entergy Corporation. The structure through which Entergy owns the IP3 LLC is even more complex because the LLC that owns these plants is, in turn, 50 percent owned by two other indirect Entergy subsidiaries, Entergy Nuclear New York Investment Company I and Entergy Nuclear New York Investment Company II. Entergy Nuclear New York Investment Companies are themselves subsidiaries of Entergy Nuclear Holding Company #1 which, in turn, is a wholly-owned subsidiary of Entergy Corporation. Another Entergy subsidiary, Entergy Nuclear Operations, Inc. ("ENO") operates Entergy's nuclear units in the Northeast.

Case law indicates and the NRC staff has expressed serious doubts as to its ability to hold a parent corporation responsible for the liabilities incurred by a subsidiary.

A particular concern is that each intervening LLC can act as a barrier to extending liability to the parent corporation that contains most of the assets. It might require several separate litigations, or a very large and complex single litigation, to pierce all the corporate veils back to the parent corporation with the bulk of the assets . (Synapse Energy Economics, Inc Financial Insecurity pg 12).



In fact , in the aftermath of Katrina, Entergy New Orleans, a subsidiary of the Entergy Corporation, filed for Chapter 11 bankruptcy, even though the parent corporation continued to have ample finances. This corporate hide and seek, resulted in Entergy Corporation receiving massive government bailouts from taxpayers monies, and ratepayers in New Orleans received greatly increased energy costs.

The NRC has no statutory authority to require a licensee in bankruptcy to continue making safety-related or decommissioning expenditures or to pay retrospective Price-Anderson Act premiums.

The NRC's Office of Nuclear Reactor Regulation (NRR) on the week ending August 3, 2007 wrote that the "Indirect License Transfer Application By letter dated July 30, 2007, Entergy Nuclear requested NRC approval to implement a high level corporate restructuring involving the creation of intermediary holding companies that would result in an indirect transfer of control of the operating licenses of their Region I facilities (i.e., Pilgrim, Indian Point Units 1, 2, and 3, FitzPatrick, Vermont Yankee), Palisades, and the independent spent fuel storage installation facility at Big Rock Point. While there will be no change in technical qualifications, this action will require a complex financial qualification review. Entergy has requested staff approval by December 31, 2007. The licensee has been informed that the NRC normal schedule for license transfer reviews is 6 to 9 months and that the proposed schedule represents a significant challenge to the staff."

Currently at least three relicensing applications are being processed, adding this transfer application, only over taxes the NRC staff, and diverts the NRC staff's full attention from the technical requirements and assurances of public health and safety during the LRA reviews, to devote substantial resources for a complex financial qualification review, whose sole purpose it to protect the profits of a corporation.

If the NRC would approve this proposed transfer in the middle of the LRA review, it would add undue confusion and complication, which could result in harm to the Stakeholder's rights, in turn resulting in potential harm to the public's health and safety.

Therefore, the Stakeholder's respectfully request that ENO's application for Indirect Transfer of Control of Facility Operating Licenses Nos. DPR-26 and DPR-64 from IP2 LLC and IP 3 LLC to ENO be denied.,

CONCLUSION:

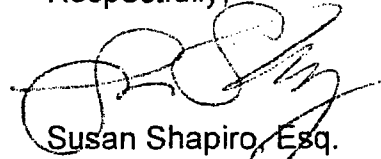
The Stakeholders respectfully request the following:

To assure the protection of Stakeholder rights of notice and participation, the September 19th, 2007 Environmental Scoping meeting must be canceled and rescheduled for no less than four weeks after proper notification appears in the Federal Registry.

ENO must be removed as a party to the LRA before it can be considered by the NRC,. Subsequently, IP2, LLC and IP3, LLC may resubmit separate LRAs for the individual LLCs for acceptance by the NRC.

ENO's application for Indirect Transfer of Control of Facility Operating Licenses Nos. DPR-26 and DPR-64 from IP2 LLC and IP 3 LLC to ENO be denied.

Respectfully,



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