

EDO Principal Correspondence Control

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FINAL REPLY:

John J. Sipos
Charlie Donaldson
Office of the Attorney General
State of New York

TO:

Annette Vietti-Cook

FOR SIGNATURE OF :

** GRN **

CRC NO: 07-0683

Dyer

DESC:

ROUTING:

Exemption from Fire Protection Regulations for
Indian Point Nuclear Power Station, Unit 3
(EDATS: SECY-2007-0429)

Reyes
Virgilio
Kane
Ash
Ordaz
Cyr/Burns
Collins, RI
Sosa, OEDO
West, OEDO

DATE: 10/09/07

ASSIGNED TO:

CONTACT:

NRR

Dyer

SPECIAL INSTRUCTIONS OR REMARKS:

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Other Assignees:

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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

October 4, 2007

Hon. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555 - 0001

Re: Docket No. 50-286 - Indian Point Nuclear Generating Unit No. 3 -
September 24, 2007 letter from John P. Boska, NRC. to
Michael A. Balduzzi, Entergy Nuclear Operations, Inc., regarding
Environmental Assessment and Finding of No Significant Impact for
Entergy's July 24, 2006 application for exemption from certain
Appendix R fire protection requirements (ML062140057);
72 Fed. Reg. 55254 - 55255 (September 28, 2007) and
72 Fed. Reg. 56798 - 56801 (October 4, 2007)

Dear Secretary Vietti-Cook:

The New York State Attorney General's Office hereby objects to the determinations that were noticed in the Federal Register last Friday and today that the Nuclear Regulatory Commission plans to grant an exemption from its fire protection regulations to the Indian Point nuclear power station.

After examining the NRC's recent Environmental Assessment and Finding of No Significant Impact attached to Mr. Boska's September 24, 2007 letter, Entergy's July 24, 2006 application for exemption from certain Appendix R fire protection requirements, and related documents, the New York State Attorney General's Office questions the legality of both the proposed exemption and the Environmental Assessment. The requested exemption is inconsistent with the statutory requirement that NRC protect health and safety, with the NRC's recognition of the importance of fire protection or mitigation measures, and with the potential environmental impact of a terrorist attack on Indian Point 3.

The Atomic Energy Act requires that NRC regulations intended to protect life or property from the release of radiation from nuclear power plants minimize this danger. NRC's fire protection regulations require the use of a 1-hour fire barrier. In 2005, the NRC determined that the Hemyc fire barrier used at Indian Point was a "nonconforming barrier," and Entergy subsequently declared the Hemyc barrier "inoperable." Reducing the fire protection at certain locations in the Indian Point 3 plant from the current 1-hour standard to either the 30 minutes or

the 24 minutes as Entergy has requested is not consistent with this statutory requirement. The requested change would amend the current license for the facility and would increase the threat from a fire affecting the locations at issue (Fire Area ETN-4, Zones 7A, 60A, and 73A).

Since the NRC, at present, does not require Entergy to protect Indian Point 3 from air-based threats, the plant remains vulnerable to the potential for an explosion or fuel fire resulting from an aircraft crashed into the plant. Consequently, the locations where the 1-hour fire protection standards would be relaxed are at increased risk under the action described in Friday and today's Federal Register.

At 72 Fed. Reg. 12705, 12710-12712 (March 19, 2007), the NRC points to the fire mitigation plans as a reason for not requiring plant owners to install barriers against air attacks by terrorists. Weakening Indian Point 3's fire protection is inconsistent with this reliance placed on nuclear plant fire protection as well as paragraph B.5.b of the February 2002 Interim Compensatory Measures ("ICM") orders, which require operators to use available resources to mitigate explosions and fires. See 67 Fed. Reg. 9,792 (Mar. 4, 2002).

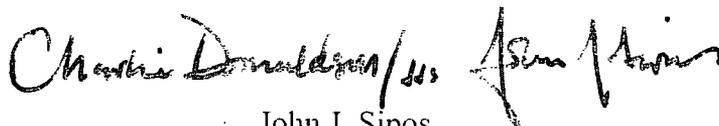
The Environmental Assessment ignores the potential environmental impact of a successful terrorist attack involving aircraft fuel or other flammable substances that exploit the weakened fire protection Entergy is requesting. As such, it is inconsistent with San Luis Obispo Mothers for Peace v. NRC, 449 F.3d 1016, 1020 (9th Cir. 2006), cert. denied, 127 S. Ct. 1124 (2007). Likewise, it ignores the impacts that could result from an accidental fire.

We further note that the September 24, 2007 letter, the Environmental Assessment, and the Federal Register notice contained an incorrect NRC accession number for a relevant August 16, 2007 letter. At a minimum, the NRC should re-commence the administrative process to correct this error and ensure procedural transparency.

For the reasons set out above, the NRC should recall and revise the Environmental Assessment, reconsider the exemption with appropriate attention to the relevant sections of the Atomic Energy Act and the National Environmental Protection Act, solicit public input for such reconsideration, and supplement and correct the public record, including, but not limited to, placing all the Entergy, Hemyc, and NRC documents relevant to this action on the NRC's "ADAMS" network.

Thank you for your attention and consideration. If there are questions, please contact one of the undersigned.

Respectfully submitted,



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cc:

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