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CORRESPONDENCE CONTROL TICKET

Date Printed: Nov 05, 2007 17:55

PAPER NUMBER: LTR-07-0741 LOGGING DATE: 11/05/2007

ACTION OFFICE: EDO

To: Dyer, NRR

AUTHOR: Mr. Sherwood Martinelli

AFFILIATION: NY

ADDRESSEE: Dale Klein

SUBJECT: Fire safety commens

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ACTION: Appropriate

DISTRIBUTION: Chairman, Comrs, OGC

LETTER DATE: 11/02/2007

ACKNOWLEDGED No

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

NOTES:

FILE LOCATION: ADAMS

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**CHAIRMAN - Fire Safety comments.**

**From:** <RoycePenstinger@aol.com>  
**To:** <chairman@nrc.gov>, <fxc@nrc.gov>, <ptk@nrc.gov>, <rsb1@nrc.gov>  
**Date:** 11/02/2007 3:15 PM  
**Subject:** Fire Safety comments.

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, 20(06 application for exemption from certain Appendix R fire protection requirements (ML062140057); 72 Fed. Reg. 55254 - 55255, (72 Fed. Resi. 56798 - 56801 (October 4, 2007)

Dear Secretary Vietti-Cook:

First, I do apologize that this document is tardy in arriving, but the NRC is putting out so many notices requiring citizen action, that it is impossible for average stakeholders such as myself to keep up. Couple this reality with the inadequate NRC document retrieval system (ADAMS) not working properly if at all in the past couple of weeks, and sure you can understand this response arriving late. Living less than 3 miles from the aging, embrittled Indian Point reactors with their sleeping guards, tritium and strontium leaks, the site being run by an inept or dishonest company that is known to cut corners that seems incapable of installing a working Emergency Siren system, and I have a serious stake in any issues such as this that greatly lower Fire Safety Margins so close to my home. So, even though barely tardy in my response, it is in the best interest of fairness, and public safety that my comments and concerns be included. It is therefore formally requested that my comments contained herein be accepted as if timely filed.

I do hereby object to the wrongful, and industry serving determinations that were noticed in the Federal Register on September 28<sup>th</sup> and October 4<sup>th</sup>, 2007 wherein it is stated that the NRC intends to grant an amendment to and already existing exemption as relates to fire protection regulations for the poorly constructed, problem plagued Indian Point nuclear power stations owned by Entergy, who recently had their cooling towers collapse at the Vermont Yankee nuclear power plant. This significant and further depreciation of fire safety margins at Indian Point is unacceptable, and creates both significant public safety and environmental impact risks and issues.

1. The decision seems legally odd at best, and from my layman's reading of the rules and regulations, runs contrary to law, but then that never has stopped the NRC before in making decisions in the best interest of their beloved licensees and the NEI. The requested exemption runs contrary to the NRC statutory requirement to protect health and safety. This inconsistency is even more alarming in light of the EPRI study that led to Entergy's filing for an amendment to lower already greatly reduced Safety Margins. Even the 30 minute amendment is questionable, since the EPRI study reported that several of the tests showed failure rates in as fast as 24 minutes. Of great concern here, is that in addition to throwing reason to the wind, the NRC is ignoring the fact that Indian Points inadequate safety systems were actually grandfathered in, as admitted in the below excerpt from a document found on ADAMS and written by the villainous Sam Collins:

During the EQ rule-making process in 1982, the Commission again had the opportunity to require older plants to meet the latest standards. When the rule (10 CFR 50.49) was finalized, the Commission deemed older qualification methods acceptable (i.e., grandfathered them). **NOTE-seems contrary to public health and safety to GRAND FATHER IN antiquated safety systems when we are talking about human health and safety.**

2. I question the legality of making such a decision while the NRC is conducting a NEPA ordered SEIS for Indian Point. If you look at 10 CFR 51, which is the NRC implementing guidance for NEPA, it specifically precludes federal decision of this nature while the NEPA process is going on if that federal action would significantly change the license, or reduce the potential alternatives to be evaluated.
3. The NRC conclusion that amending the Fire Safety rules does not constitute a major federal action are simply incorrect and potentially represent collusion between the NRC and the nuclear industry aimed at fostering relicensing in the name of a Nuclear Renaissance. The heart and soul of public safety involves Fire Safety, and a licensee's ability to implement and maintain a Safe Shutdown. Several factors must be investigated in ascertaining the licensee's ability to meet this new MAJOR license change. One of them deals with the fact that over 70 percent of critical licensee personnel reside more than half and hour from the plant. In a "all

hands on deck Emergency Fire Scenario", it would be impossible for Indian Point to bring in enough of their critical personnel to implement the new fire safety commitment in the 30 minute time frame allowed, especially during times (like holidays) when they are working with a skeletal crew. Therefore, the requested amendment to the exemption is inconsistent with the statutory requirement that the NRC protect health and safety.

4. The proposed fire safety amendment could never be implemented if the fire was a result of a terrorist attack, or major accident, such as the crash landing a commercial or military aircraft.
5. The requested amendment to the already Granted Fire Safety exemption would lower the one hour fire barrier window by half to 30 minutes, but the EPRI tests make even that goal seem an unlikely attainment. It is very troublesome, that the NRC and the DOE are paying EPRI to conduct studies, then through exemptions and proposed rule changes want to lower SAFETY MARGINS to the tests results. Another example of this, is the NRC announcement of a proposed rule change for reactor vessel thermal shock. It is pointed out here, that an industry study concludes that NO PWR REACTOR could meet the current Safety Margins for reactor vessel thermal shock during their 20 year period of license renewal. It is more than convenient that the NRC is now wanting to LOWER THOSE SAFETY MARGINS to mirror the rest results, while claiming the original rule as written was overly conservative.
6. The NRC has already determined that the Hemyc Fire Barriouer used at Indian Point was a NON CONFORMING BARRIER, and further, even Entergy subsequently admitted the Hemyc Fire Barrier was/is inoperable.
7. Allowing Entergy to lower the Fire Safety protection to 24 or 30 minutes as Entergy has requested is totally inconsistent with statutory requirements. This exemption would greatly increase the threat to the general public should a major fire erupt at the Indian Point facility.
8. At present, NRC does not require Entergy to protect Indian Point 3 from air based, threats (accidents or attack), the plant remains vulnerable to the potential for an explosion or fuel fire resulting from an aircraft crashed into the plant grounds. Consequently, the locations where the 1-hour fire protection standards would be relaxed are at a greatly increased risk, and that increased risk places public safety in jeopardy.

At 72 Fed. Re., 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 2009 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 NRC and its licensees want to have the knife cut in their favor both ways, with public safety sacrificed on the altar of financial convenience and corporate profits. That is unacceptable, and contrary to the basic regulatory duty of the NRC to protect human health and safety.

The Environmental Assessment ignores the potential environmental impact of a successful terrorist attack involving aircraft fuel or other flammable substances that would 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 (9<sup>th</sup> Cir. 2006) cert. denied, 127 S. Ct. 1124 (2007).

One last point should be made. The NRC should 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. In all fairness, due to this major clerical error, the NRC should re-commence the entire administrative process so that this egregious error can be corrected, thus assuring 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 and NRC 10 CFR 51. Further, the NRC should make a more honest effort at soliciting public input for such a significant federal action that affects public health and safety. To further honest public discourse and stakeholder involvement in this issue, all Entergy, industry and NRC documents related directly or indirectly to this exemption request, including EPRI studies should be uploaded to NRC's often times non working "ADAMS" network.

Thank you for your attention and consideration. If there are questions, please contact me at your earliest convenience.

Respectfully submitted,

Sherwood Martinelli  
351 Dyckman Street  
Peekskill, New York 10566  
914 73 1955

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