

EDO Principal Correspondence Control

FROM: DUE: 12/06/07

EDO CONTROL: G20070780
DOC DT: 11/02/07
FINAL REPLY:

Sherwood Martinelli

TO:

Chairman Klein

FOR SIGNATURE OF :

** GRN **

CRC NO: 07-0740

Dyer, NRR

DESC:

Appeal to 2.206 - Indian Point
(EDATS: SECY-2007-0494)

ROUTING:

Reyes
Virgilio
Mallett
Ash
Ordaz
Burns
Collins, RI
Cyr, OGC
Jones, OGC
Mensah, NRR

DATE: 11/06/07

ASSIGNED TO:

NRR

CONTACT:

Dyer

SPECIAL INSTRUCTIONS OR REMARKS:

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2007-0494

Source: SECY

General Information

Assigned To: NRR

OEDO Due Date: 12/6/2007 5:00 PM

Other Assignees:

SECY Due Date: NONE

Subject: Appeal to 2.206 - Indian.Point

Description:

CC Routing: Region I; OGC

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20070780, LTR-07-0740

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

Roadmap Item: NO

Process Information

Action Type: Letter

Priority: Medium

Signature Level: NRR

Sensitivity: None

Urgency: NO

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions:

Document Information

Originator Name: Sherwood Martinelli

Date of Incoming: 11/2/2007

Originating Organization: FUSE USA

Document Received by SECY Date: 11/6/2007

Addressee: Chairman Klein

Date Response Requested by Originator: NONE

Incoming Task Received: E-mail

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Nov 06, 2007 10:14

PAPER NUMBER: LTR-07-0740 **LOGGING DATE:** 11/05/2007
ACTION OFFICE: EDO

AUTHOR: Sherwood Martinelli
AFFILIATION: NY
ADDRESSEE: Dale Klein
SUBJECT: 10 CFR 2.206 petitions on Indian Point-appeal of decision made by board

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

DATE DUE: **DATE SIGNED:**

EDO --G20070780

CHAIRMAN - Re: 10CFR2.206 petitions on Indian Point-appeal of decision made by board.

From: <RoycePenstinger@aol.com>
To: <JPB1@nrc.gov>, <chairman@nrc.gov>, <fxc@nrc.gov>, <ptk@nrc.gov>, <rsb1@nrc.gov>, <PDR@nrc.gov>, <FOIA@nrc.gov>
Date: 11/02/2007 2:43 AM
Subject: Re: 10CFR2.206 petitions on Indian Point-appeal of decision made by board.
CC: <geri_shapiro@clinton.senate.gov>

Dear Chairman:

In an email letter sent by JPB1 (John P. Boska) he attached a copy of a letter of decision on two separate 2.206 Petitions that I filed. It is my belief that:

1. The NRC in its attempts to rail road communities hosting aged reactors into accepting forced relicensing are breaking their own rules, and deliberately running out the clock on activist such as myself by deliberately finding excuses to deny our filings, find fought with our filings as excuse to reject them, or use up our time to meet NRC deadlines, such as the November 30th deadline to file contentions in the Indian Point License Renewal process. As proof of this, it is pointed out that the license renewal staff have made FUSE USA refile their first 26 contentions four separate times now. Again, in an attempt to push aside legitimate issues, the NRC staff have egregiously ruled that I am seeking rule changes, rather than rule enforcement. They, simply stated are wrong. It is almost criminal that NRC staff, and the board established to protect human health and safety are far more concerned at eliminating any action that would interfere with a NRC stated goal of relicensing aging reactors at all costs, including breaking the law in the name of a Nuclear Renaissance.

2. That NRC staff are not giving us due process...as example, I point out that I was not given a chance to refine my 2.206, nor did Mr. Boska bother seeking clarification on the issues that I raised...in fact, in one conversation, claiming he had a meeting to attend terminated a call before I had a chance to make my points to him. If he was short on time that day, why did he bother calling me if he only had a couple of minutes to spare?

I am therefore appealing the decision reached as relates to the two 2.206 decisions. The lame excuse given for denying my petitions, was that they failed to meet the criteria for a 2.206 petition, as I was not seeking any enforcement action. Enforcement action has two key elements...a licensee, and a rule that is not being abided by, and/or enforced. A 2.206 Petition in its simplest form asks or requests that the NRC enforce its rules AS THEY ARE WRITTEN (emphasis added). In the letter, signed by Ho K. Nieh, Deputy Director he describes my requests in the 2.206's as follows.

In the first email, you requested "that the Environmental Costs of a targeted terrorist attack on Indian Point be included in the scoping process for Indian Point." In the second email, you made several requests, including "an order from the Commission that would put EVERY HISTORICAL DOCUMENT up onto ADAMS," as well as "that every Proprietary document in the entire Indian Point files be reviewed...and released to the public via ADAMS," and "provide to the public a full and un-redacted version of the Safety Analysis;" and lastly, "a STAY of clock [on the license renewal application process] until such time as this review is done."

1. Environmental Costs of a targeted terrorist attack on Indian Point be included in the scoping process for Indian Point.

A) NEPA as well as 10 CFR 51 require that environmental impacts associated with any action be included in the Site Specific Environmental Impact Statement, and in the Supplemental Environmental Statement prepared by the license renewal applicant, no matter how small that impact might be. In fact Entergy admits this fact in their Appendix E to the LRA.

B) Security, and specifically, the DBT have been, in my opinion, wrongfully removed from SCOPE, as well as the Evacuation Plan. What has NOT BEEN REMOVED from the SEIS, or from SCOPE is the environmental impacts should either the DBT, or Evacuation Plan when implemented prove inadequate to protect human health and the environment.

I've not asked the NRC to change its rules, but instead am requesting that they enforce them as relates to their licensee, Entergy Indian Point 2 LLC, and Entergy Indian Point 3 LLC. The Ninth Circuit Court decision in favor of Mothers For Peace would tend to support my claim that the NRC rules and regulations AS WRITTEN (emphasis added) require the licensee (Entergy) to submit this information as a part of their License Renewal Application. Their failure to do so affords me and opportunity to file a 2.206 Petition. Based on that belief, I filed my 2.206 Petition asking for the commission to ENFORCE ITS RULES AND REGULATIONS AS WRITTEN, to take enforcement action to see that Entergy is abiding by the RED LETTER OF THE LAW.

Since I believe the licensee is violating a section of the NRC 10 CFR Rules and Regulations as they currently exist, I am entitled to a hearing before the board on this issue, and if the NRC then rules against me, and hands down a FINAL APPEALABLE ORDER I can then take that into the Second District Court, or other court of proper jurisdiction.

2. An order from the Commission that would put EVERY HISTORICAL DOCUMENT up onto ADAMS.

A) First, for the sake of ACCURACY, I asked that all HISTORICAL DOCUMENTS related to the Indian

Point License Renewal Application be put up onto ADAMS.

B) NRC rules and regulations state that ALL documents necessary for the public to read, understand and comment on a license renewal application be easily available. They are not. Right now, the only documents available on ADAMS are from 1999 forward with a few rare exceptions, with those exceptions usually the result of a previous filed FOIA after 1999.

C) The NRC itself has stated at two public License Renewal meetings in our community that ALL THE DOCUMENTS on Indian Point are on ADAMS. They are not.

D) The Current Licensing Basis, the cornerstone of the License Renewal Application process actually encompasses every single historical document ever created for IP1, IP2 and IP3. I name all three reactor licensees, as IP2 and IP3 include in their license renewal application use of certain IP1 systems for their continues operation during the period of license renewal.

In short, NRC Rules and Regulations as they are currently written require that citizens be given full and unfettered access to the documents needed to adequately review the License Renewal Application. Your own NRC staff (Bo Phem...we have him on tape, and his words are in the transcript of the last meeting) has stated these documents are on ADAMS. Again, NRC rules and regulations are not being enforced, nor abided by. I am therefore entitled to file a 2.206 Petition to see that those rules are enforced...it is herein noticed, that the Commission has a duty and responsibility to make sure their employees, and their licensees are abiding the laws and regulations that govern the industry, which means a stakeholder can file a 2.206 Petition asking the NRC Commission to enforce the rules and take action against its own staff if they are not abiding by the laws.

3. That every Proprietary document in the entire Indian Point files be reviewed...and released to the public via ADAMS.

A) Again, as the expression goes, "Not exactly!" The NRC has a track record of rewriting what citizens say to suit their own devilish plans. IF we ask a inconvenient question, they simply rewrite it in a fashion that allows them to do what they want, answer it in a fashion that meets their agenda, rather than their purpose for existence, which is to protect human health and the environment.

B) John P Boska is a deceitful and dishonest man in my opinion. First, I asked that the NRC abide by the 10 CFR rules and regulations, specifically the ones in 2.309 and part 51 as relates to the handling of proprietary documents.

C) I alleged, and can prove that Entergy is abusing the Proprietary Rules, and that the NRC itself is not following them. The NRC is required by their own rules and regulations to WEIGH the publics right to know against the licensees desire to keep the document private, and if the publics right to know out weighs the company's desire to keep the information secret, the document is to be made public. Further, the licensee (Entergy) is required by the 10 CFR rules and regulations to submit a DETAILED SUMMARY of every document, or portion there of that they have requested be kept out of the public perview, which they have not done.

So, again we have the NRC and Entergy failing to abide by the RED LETTER OF THE LAW, failing to abide by the rules and regulations as they are written. I am therefore completely within my right to file a 2.206 petition seeking enforcement of said rules and regulations. I again, have not requested a RULE CHANGE, but instead have filed a formal request for enforcement of the rules as they exist.

4. Provide to the public a full and un-redacted version of the Safety Analysis.

A) The Commission can take notice from their own records, that Chapter 14 of Appendix E to Entergy's License Renewal Application, the "Safety Analysis" has over 80 percent of it removed. 10 CFR 54 and 10 CFR 51 and other rules and regulations that help implement these two important license renewal rules require the licensee to provide a safety analysis. Said Safety Analysis is then used to create, and to justify their Aging Management Program for the period of license renewal.

B) If citizens cannot see the Safety Analysis Report, we in turn cannot adequately gauge the adequacy of any of the Aging Management plans during the period of license renewal, nor can we intelligently form and support contentions. Without the Safety Analysis, we literally have half of a play book.

Again, NRC's rules and regulations require the licensee to provide the public with a full and complete Safety Analysis. They have NOT DONE SO in their License Renewal Application, and I am therefore fully within my rights to file a 2.206 Petition for Enforcement.

Lastly, I asked for a stay of the License Renewal Application clock. Each of the issues I have brought up, all of the enforcement actions I am seeking deal with our community's rightful access to document necessary to fully and completely review Entergy's License Renewal Application, form, write and support our contentions. It is pointed out here, that the NRC's own rules for citizen involvement specifically stipulate that we must be capable of supporting our contentions with A) expert testimony, or B) proper documents to support our claims. The issues in these 2.206 Petitions go to the heart of our community's ability to support our contentions with DOCUMENTS, to win our contentions by laying out the facts as shown in the chronology of events represented in these documents. Further, the rules governing 2.206 give the Commission a great deal of room in making decisions. Until we have these documents, we cannot adequately and actively participate in the process, cannot adequately review Entergy's application, cannot raise and support many of our contentions. It is therefore in the PUBLICS BEST INTEREST, in the best interest of public health and safety to stay the clock (from the date I originally filed the petitions) until such time as all legal avenues have run their course, and if we the citizens are successful in our requests, that we have all necessary documents provided to us.

Therefore, it is respectfully requested that the decisions on these two 2.206 be SET ASIDE, and the issues raised be scheduled for a hearing.

Respectfully,

Sherwood Martinelli
351 Dyckman Street
Peekskill, New York 10566
914 734 1955

October 24, 2007

Mr. Sherwood Martinelli
351 Dyckman Street
Peekskill, NY 10566

Dear Mr. Martinelli:

This letter is in response to two emails addressed to the Chairman of the Nuclear Regulatory Commission (NRC), both dated September 21, 2007, in which you submitted "formal requests under the guidelines of 10 CFR 2.206" for specific action by the NRC related to Indian Point Nuclear Generating Unit Nos. 2 and 3.

In the first email, you requested "that the Environmental Costs of a targeted terrorist attack on Indian Point be included in the scoping process for Indian Point." In the second email, you made several requests, including "an order from the Commission that would put EVERY HISTORICAL DOCUMENT up onto ADAMS," as well as "that every Proprietary document in the entire Indian Point files be reviewed...and released to the public via ADAMS," and "provide to the public a full and un-redacted version of the Safety Analysis;" and lastly, "a STAY of clock [on the license renewal application process] until such time as this review is done."

Your emails were both referred to the Office of Nuclear Reactor Regulation (NRR) for consideration pursuant to 10 CFR Part 2.206.

In the case of your email regarding including costs for terrorist attacks in the Environmental Impact Statement, NRR has found that the request does not meet the criteria for consideration under 10 CFR 2.206, because it does not contain a request for enforcement-related action, but instead seeks a change in NRC policy or regulations. The substance of your request will be reviewed by, and you will receive a written response from, the NRR Division of License Renewal. Similarly, in the case of your email regarding making every historical document available on ADAMS, NRR has found that the request does not meet the criteria for consideration under 10 CFR 2.206, because it does not contain a request for enforcement-related action. Instead, your request seeks changes in NRC's management of its document system, ADAMS, and constitutes a challenge to NRC rules regarding the treatment of proprietary information. Your request to require the licensee to provide an un-redacted version of the Safety Analysis is not a request for enforcement related action, but instead constitutes a challenge to NRC requirements regarding treatment of sensitive information. Finally, your request for a stay on the license renewal application process is not a request for enforcement related action, but raises a licensing matter.

- 2 -

Accordingly, your request will be further reviewed by, and you will receive a written response from, the NRR Division of Operating Reactor Licensing.

Thank you for your interest in these matters.

Sincerely,

/RA/

Ho K. Nieh, Deputy Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation
Docket Nos. 50-247 and 50-286

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Mail Envelope Properties (472AC71C.58C : 11 : 25996)

Subject: Re: 10CFR2.206 petitions on Indian Point-appeal of decision made by board.

Creation Date Fri, Nov 2, 2007 2:43 AM

From: <RoycePenstinger@aol.com>

Created By: RoycePenstinger@aol.com

Recipients

nrc.gov

OWGWPO03.HQGWDO01
FOIA ()

nrc.gov

TWGWPO04.HQGWDO01
PDR ()

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kp1_po.KP_DO
RSB1 (Richard Barkley)

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PTK (Pao-Tsin Kuo)

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FXC (Francis Cameron)
JPB1 (John Boska)

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Files	Size	Date & Time
MESSAGE	14922	Friday, November 2, 2007 2:43 AM
TEXT.htm	18004	
Mime.822	36497	

Options

Expiration Date:	None
Priority:	Standard
ReplyRequested:	No
Return Notification:	None

Concealed Subject:	No
Security:	Standard

Junk Mail Handling Evaluation Results

Message is eligible for Junk Mail handling
This message was not classified as Junk Mail

Junk Mail settings when this message was delivered

Junk Mail handling disabled by User
Junk Mail handling disabled by Administrator
Junk List is not enabled
Junk Mail using personal address books is not enabled
Block List is not enabled