



Indian Point Energy Center
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Robert Walpole
Manager, Licensing

November 8, 2007

Re: Indian Point Unit 1
Docket No. 50-003
NL-07-132

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Subject: **Martinelli 10 CFR 2.206 Petition**

- References:
1. Mr. Sherwood Martinelli's 10 CFR 2.206 Petition Regarding Indian Point 1 SAFESTOR
 2. Entergy letter NL-07-033, F. Dacimo to NRC Document Control Desk; "License Amendment Request (LAR) - Unit 1 Fuel Handling Building Crane", dated February 22, 2007, ADAMS Accession No. ML070740552.

Dear Sir or Madam;

On September 28, 2007, Mr. Sherwood Martinelli filed a 10 CFR 2.206 Request for Action by the Commission based on his belief the Entergy's Indian Point Energy Center (IPEC) IP-1 "is in violation of its SAFESTOR status." Reference (1) is the 10 CFR 2.206 petition regarding the IP-1 SAFESTOR status and the pending USNRC approval for changes to the IP-1 provisional license in support of the IP-1 Dry Fuel Storage Project.

In Reference (2), Entergy Nuclear Operations, Inc. (ENO) submitted a License Amendment Request (LAR) to the Indian Point Unit 1 (IP-1) Provisional Operating License regarding the use of the Fuel Handling Building crane in support of the Dry Fuel Storage (DFS) project. In support of the DFS project, the IP-1 crane will be used to load the IP-1 spent fuel from the IP-1 spent fuel pool into the sealed canisters in the IP-1 Fuel Storage Building. The canisters will then be transported to IP-2 Fuel Storage Building where the IP-2 110 ton gantry crane will be used to transfer IP-1 seal welded fuel canisters from a transfer cask into a concrete storage overpack for storage on the Independent Spent Fuel Storage Installation (ISFSI) pad. This LAR is pending with the NRC.

Contrary to the five assertions in Mr. Martinelli's 2.206 petition, IPEC maintains that the past and planned future activities associated with IP-1 are in full compliance with its license and the Commission's "Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility", SECY 96-01, dated January 31, 1996. (ADAMS Accession No. ML992950095).

FSME/DMSSA/SSB
NMSS/OD
Add: John Boska NRR
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VED3

The NRC has been conducting periodic inspections of the IP-1 facility and the most recent inspection, dated February 20, 2007, is documented in NRC Inspection Report 05000003/2007008. The inspection was an examination of IP-1 licensed activities as they relate to maintenance and surveillance activities and storage of spent nuclear fuel at IP-1. The inspection consisted of observations by the inspectors, interviews with personnel, and a selected examination of representative records.

Within the scope of this inspection, the NRC did not identify any violations and the programs related to the IP-1 Technical Specifications (TS) were appropriately implemented. The Inspection Report concluded that the licensee maintained an effective surveillance and maintenance program relative to TS requirements for the safe storage, maintenance, and control of spent fuel. The Report did not identify any aspect of licensee noncompliance with any provision of its license or Technical Specifications.

In addition to NRC oversight, Entergy implements an effective, proactive program to identify, resolve and prevent issues that would degrade safety or the quality of maintaining IP-1 in a safe storage condition to allow for subsequent decommissioning. This inspection program provides further assurance that IP-1 remains in compliance with Commission Orders, as well as with the IP-1 license.

Entergy is providing more detailed information in response to the five assertions in the 10 CFR 2.206 petition in Attachment 1 to this letter.

Entergy is making no new commitments in this letter. Should you have any questions regarding this matter, please contact Mr. Robert Walpole, Manager, Licensing, Indian Point Energy Center at (914) 734-6710.

Sincerely yours,



Robert Walpole
Manager, Licensing

Attachment 1: Information Submitted in Response to 10 CFR 2.206 Petition Filed by S. Martinelli, Dated September 28, 2007

cc: NRC Resident Inspector's Office, IPEC
Mr. John Boska, Senior Project Manager, NRC NRR DORL
Mr. Samuel Collins, Regional Administrator, NRC Region 1
Mr. Paul D. Tonko, President, NYSERDA
Mr. Paul Eddy, New York State Dept. of Public Service
Mr. Paul M. Bessette, Morgan, Lewis & Bockius, LLP

ATTACHMENT 1 TO NL-07-132

**INFORMATION SUBMITTED IN RESPONSE TO 10 CFR 2.206 PETITION FILED BY
S. MARTINELLI, DATED SEPTEMBER 28, 2007**

**ENTERGY NUCLEAR OPERATIONS, INC.
INDIAN POINT UNIT NO. 1
DOCKET NO. 50-003**

Assertion # 1

"Various components of IP-1 are wrongfully being used to support the activities and operations of other NRC licenses, specifically IP-2 LLC and IP-3 LLC."

Response

This assertion is vague, unsupported, and factually incorrect.

The Safety Evaluation by the Office of Nuclear Reactor Regulation related to an order authorizing decommissioning and Amendment 45 to License DPR-5, dated January 31, 1996, (ADAMS Accession Nos. ML 070310227 and ML992950095, SECY 96-01) explicitly states that:

"IP-1 encompasses many systems and buildings that are required for operation of IP-2. Except for the fuel-handling building which houses the spent fuel, all other major buildings, including the IP-1 containment building, contain common facilities that will continue to be used to support IP-2 operations. This situation is expected to continue throughout the life of IP-2."

IP-1 has been shut down since October 31, 1974. Since that time, the reactor has remained in a shutdown, defueled condition, and IP-1 has continued to serve as a support facility for the operation of IP-2. IP-1 and IP-2 share a number of systems and facilities and also a common operating organization. IP-1 contains radioactive waste processing facilities that provide radioactive waste processing for both IP-1 and IP-2. These shared facilities and programs are consistent with the terms of both the IP-1 and IP-2 licenses.

Accordingly, the assertion that certain unspecified components of IP-1 are wrongfully being used to support the activities of IP-2 is not valid.

Further, no components of IP-1 are used to support the activities and operations of IP-3.

Assertion # 2

"IP-1 has failed to repair previous leaking spent fuel pools so that current spent fuel rods at Indian Point 1 could be transferred into said refurbished pool, so that currently leaking spent fuel pool could be drained and restored to Design Basis."

Response

Entergy has previously notified the NRC of its intended approach to repairing the identified leak in the IP-1 spent fuel pools. In particular, Entergy advised the NRC of its intent to remove all the spent fuel from storage in the IP-1 spent fuel pools and drain both pools completely, thereby precluding any further leakage. Specifically, by letter dated December 29, 2003, IPEC informed the NRC that:

"This letter serves as notification per the requirements of 10 CFR 72.212 to inform you of Entergy's intent to store spent fuel in dry casks on the site of the Indian Point Energy Center, in an Independent Spent Fuel Storage Installation....Initially spent fuel storage will be from IP-2 and will be followed in future years with spent fuel storage from IP-1 and IP-3." (Reference Letter Number NL-03-190)

More recently, in a letter dated February 22, 2007 to the NRC, Entergy stated that:
"Entergy intends to construct and operate an Independent Spent Fuel Storage Installation (ISFSI) at Indian Point under the general license provisions of 10 CFR 72, Subpart K. IP-1 has 160 fuel assemblies stored in the IP-1 spent fuel pool and upon transfer of the assemblies to dry cask storage, ENO is planning to drain the Unit 1 spent fuel pools which will eliminate any leakage pathway from the pool to the environment." (ADAMS Accession No. ML070740552).

The planned transfer of spent fuel from IP-1 fuel pools is currently scheduled for the June / July 2008 time frame, followed by the draining the spent fuel pools of all radioactive water.

Assertion # 3

"IP-1 is wrongfully trying to cross contaminate waste streams with a separate NRC license in their plan to use the spent fuel pool of IP-2 LLC to transfer their separately licensed materials into dry cask storage."

Response

The assertion appears to imply that the IP-1 spent fuel will be placed in the Unit 2 spent fuel pool. This is factually incorrect.

The IP-1 spent fuel will be loaded into canisters in the IP-1 cask loading pool using the IP-1 fuel handling building crane. The canisters will be seal welded shut in IP-1 and moved to IP-2 using a transfer cask.

For IP-1, Entergy has proposed that the IP-2 Fuel Storage Building 110 ton gantry crane will be used to transfer IP-1 seal welded fuel canisters from a transfer cask into a concrete storage overpack. The IP-2 crane will be used for this evolution due to the restricted overhead clearance in the IP-1 Fuel Storage Building which precludes the transfer of the sealed canisters into the concrete storage overpack casks in the IP-1 Spent Fuel Building. (ADAMS Accession No. ML070740552; Reference 1)

At no time will the IP-1 fuel be commingled with IP-2 spent fuel and at no time will the IP-1 spent fuel be placed in the IP-2 spent fuel pool.

Assertion # 4

"IP-1 is unlawfully allowing MIXED wastes to be stored in IP-1 containment area, and in various non-specifically identified burial sites, thus risking human health and the environment. Said mixed waste burial sites are not fully identified and monitored, thus creating possible migration pathways for human ingestion."

Response

There is a limited amount of mixed waste stored in IP-1 but the assertion that this storage is unlawful is incorrect. The storage of this waste is the subject of correspondence between the NRC, Entergy, and the New York State Department of Environmental Conservation (NYSDEC). The State of New York requested that the NRC confirm that the waste stored in IP-1 was being stored in accordance with NRC regulations. This request was forwarded to the NRC by Consolidated Edison and the NRC responded with an on-site inspection and report. Subsequently NYSDEC issued a consent order allowing the continued storage of the waste and established periodic reporting requirements. (ADAMS Accession No.'s ML012710009, ML012710085, ML013020460 and ML013170225)

As reflected in the foregoing correspondence, this waste is being lawfully stored and monitored in accordance with a New York State Administrative Order on Consent between NYSDEC and Con Edison executed September 5, 2001, and the subsequent conditional exemptions for mixed waste storage filed with the US EPA and NYSDEC, February 19, 2002 and October 20, 2005, respectively. An annual inventory is performed on all stored mixed wastes. For ALARA reasons, the wastes located in the reactor cavity are tightly controlled and inspected annually. All other wastes are inspected at a minimum quarterly, in accordance with the mixed waste treatment and storage conditional exemption.

Entergy has no information indicating that any mixed waste is or was ever stored in any "non-specifically identified burial sites". The continued reporting requirements of the Consent Order document that no facilities currently exist for the treatment/disposal of this mixed waste.

Assertion # 5

"As the copied letter, marked as Exhibit A shows, Entergy is attempting to modify the license for IP1 in such a fashion as to bring back into operation a MAJOR component of IP-1, specifically the crane, and to use said crane to unlawfully CO-MINGLE licensee spent fuel waste streams by moving IP-1 rods into the spent fuel pool of IP-2, which is already to the point of bursting, and in fact will not have adequate rack space for a full core emergency dump after the spring turn around unless they can begin moving fuel from the pool in large quantities this fall."

Response

The IP-1 crane referenced in the assertion serves the Fuel Handling and Chemical Services Buildings and was never removed from operation and has been used to support on-going activities in both buildings as described in the Decommissioning Plan /

Final Safety Analysis Report, discussed in the Response to Assertion # 1. The crane will be used to load IP-1 fuel assemblies into canisters which will then be sealed. This use to load fuel is part of the original design basis for the crane. Also the continued and future planned use of this crane is discussed in detail in the Entergy Letter dated February 22, 2007 to the USNRC. (ADAMS Accession No. ML070740552; Reference 2)

The assertion that IP-1 fuel rods will be co-mingled with IP-2 fuel rods in the IP-2 fuel pool is factually incorrect as discussed in the Response to Assertion # 3.