

February 12, 2008

Mr. Sherwood Martinelli
Friends United for Sustainable Energy
351 Dyckman Street
Peekskill, NY 10566

Dear Mr. Martinelli:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your electronic transmission representing Friends United for Sustainable Energy (FUSE) dated September 28, 2007. You submitted a petition pursuant to Title 10, Section 2.206, "Requests for Action under This Subpart," of the *Code of Federal Regulations* (10 CFR 2.206) to Chairman Dale Klein of the Nuclear Regulatory Commission regarding the Indian Point Nuclear Generating Unit Nos. 2 and 3. You requested that the NRC (1) issue orders, effective immediately, to suspend the Indian Point licenses until the new emergency siren system is fully approved by both the Federal Emergency Management Agency (FEMA) and the NRC, and (2) fine Entergy Nuclear Operations, Inc. (Entergy), the licensee for the Indian Point Nuclear Generating Unit Nos. 2 and 3, \$130,000 per day from the date of your petition until Entergy complies with the NRC's Confirmatory Order of January 31, 2006, which requires the licensee to install backup power for the Indian Point siren system.

In addition, by electronic transmission dated January 24, 2008, you amended your original petition by citing the recent discovery of corrosion on sirens for the new emergency notification system. In the amended petition, you requested that the NRC (1) issue an order to immediately place both Indian Point Unit Nos. 2 and 3 in Cold Shutdown, (2) suspend Entergy's license to operate Indian Point Unit Nos. 2 and 3 until such time as they are in full compliance with their design basis threat, current licensing basis, and all NRC rules and regulations, and (3) fine Entergy on a daily basis for no less than \$500,000 until such time as the sirens have been fully approved by all levels of government.

The NRC's Petition Review Board (PRB) met twice to consider your requests for immediate effective orders. The PRB concluded that your petition, as amended, did not set forth facts sufficient to constitute a basis for the requested actions. Specifically, the petition did not identify any significant safety issues that would justify an immediate shutdown. Therefore, these requests were denied. You were notified of these decisions by Mr. John Boska of my staff by telephone on November 1 and December 19, 2007, for the original petition and by electronic transmission on January 30, 2008, for the addendum.

On December 21, 2007, a conference call was held with you, the PRB, and a representative of Entergy. During this conference call, you provided additional details regarding the new emergency notification siren system at the Indian Point facility. A transcript of this discussion, which is enclosed for your information, can be found at Agencywide Documents Access and Management Systems, Accession No. ML080140267.

The PRB's final recommendation is to accept for review, pursuant to 10 CFR 2.206, two concerns identified in your petition: (1) Entergy's failure to install the new emergency notification siren system at the Indian Point facility in a timely fashion, and (2) corrosion found in sirens for the new emergency notification system. Other concerns regarding the new emergency

notification siren system did not meet the criteria for acceptance for review pursuant to 10 CFR Section 2.206 because they were evaluated and resolved in previous NRC staff reviews or raise matters within the jurisdiction of FEMA and not NRC (see Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions"). Your claim of NRC staff misconduct, that the NRC knew Entergy could not meet the deadline for implementing the new emergency notification siren system, but publicly represented otherwise, has been referred to the NRC Office of the Inspector General.

The PRB has taken the further step of consolidating the concern regarding the failure to implement the siren system in a timely fashion raised by your petition of September 28, 2007, with a similar issue raised by the FUSE petition of June 25, 2007. This step is being taken due to the similarity of the issues raised by both petitions, because both petitions were submitted at approximately the same time, and because you are the principal external stakeholder for both petitions.

As provided by Section 2.206, we will take action within a reasonable time on your concern and the concern of FUSE regarding Entergy's failure to implement the siren system in a timely fashion. I have assigned Mr. John Boska to be the petition manager for this petition. Mr. Boska can be reached at 301-415-2901. Your petition is being reviewed by the Office of Nuclear Reactor Regulation.

Enclosed for your information is a copy of the notice that is being filed with the Office of the *Federal Register* for publication. Also enclosed for your information is a copy of MD 8.11, along with the associated brochures NUREG/BR-0200, "Public Petition Process," and NUREG/BR-0215, "Public Involvement in the Nuclear Regulatory Process," prepared by the NRC Office of Public Affairs.

Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Enclosures:

1. Transcript of December 21, 2007, Telephone Conference Call
2. *Federal Register* Notice
3. MD 8.11
4. NUREG/BR-0200
5. NUREG/BR-0215

cc w/encl 2: See next page

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Sincerely
 /RA/
 J. E. Dyer, Director
 Office of Nuclear Reactor Regulation

Enclosures:

1. Transcript of December 21, 2007, telephone conference call
2. *Federal Register* Notice
3. MD 8.11
4. NUREG/BR-0200
5. NUREG/BR-0215

cc w/encl 2: See next page

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ADAMS Accession Nos. ML080150040 (Package)

ML080140416 (Acknowledgement Letter and *Federal Register* Notice)

ML080140267 (Transcript)

ML050900248 (NUREG/BR-0200)

ML072760602 (Incoming petition)

ML041770328 (Management Directive 8.11)

ML003762531 (NUREG/BR-0215)

ML080250075 (Amendment to petition)

*Via email

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OFFICIAL RECORD COPY

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U.S. NUCLEAR REGULATORY COMMISSION
ENTERGY NUCLEAR OPERATIONS, INC.
ENTERGY NUCLEAR INDIAN POINT 2, LLC
ENTERGY NUCLEAR INDIAN POINT 3, LLC
INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3
DOCKET NOS. 50-247 AND 50-286
LICENSE NOS. DPR-26 AND DPR-64
RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated September 28, 2007, Mr. Sherwood Martinelli, representing Friends United for Sustainable Energy (Petitioner), has requested that the NRC (1) issue orders, effective immediately, to suspend the NRC licenses for the Indian Point Nuclear Generating Units 2 and 3 (Indian Point) until the new emergency notification siren system is fully approved by both the Federal Emergency Management Agency and the NRC and (2) fine Entergy Nuclear Operations (Entergy, or the licensee) \$130,000 per day from the date of his petition (i.e., September 28, 2007) until Entergy complies with the NRC's Confirmatory Order of January 31, 2006, which requires the licensee to install backup power for the Indian Point siren system. On January 24, 2008, the Petitioner amended the petition citing concerns with recently discovered corrosion on sirens for the new emergency notification system. In the amended petition, the Petitioner requested that the NRC (1) issue an order to immediately place both Indian Point Unit Nos. 2 and 3 in Cold Shutdown, (2) suspend Entergy's license to operate Indian Point Unit Nos. 2 and 3 until such time as they are in full compliance with their design basis threat, current licensing basis, and all NRC rules and regulations, and

(3) fine Entergy on a daily basis for no less than \$500,000 until such time as the sirens have been fully approved by all levels of government.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). On November 1 and December 19, 2007, the Petitioner was informed in telephone calls that the request for immediate action for the original petition was denied. In addition, on January 30, 2008, the Petitioner was informed by electronic transmission that the request for immediate action for the amended petition was also denied. The Petitioner participated in a conference call with the NRR Petition Review Board (PRB) on December 21, 2007, to discuss the petition. The additional information provided by the Petitioner was considered by the PRB before making its final recommendation. By letter dated February 12, 2008, the Director accepted for review, pursuant to 10 CFR 2.206, the Petitioner's concerns regarding (1) the licensee's failure to implement the new emergency notification siren system in a timely manner and (2) the recently identified corrosion found on sirens for the new emergency notification system. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

A copy of the petition and addenda can be located at Agencywide Documents Access and Management Systems Accession Nos. ML072760602 and ML080250075, respectively, and

are available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Dated at Rockville, Maryland this 12th day of February 2008.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Enclosure 1

Transcript of December 21, 2007, Teleconference

ADAMS Accession No. ML080140267

Enclosure 3

Management Directive 8.11

Review Process for 10 CFR 2.206 Petitions

ADAMS Accession No. ML041770328

Enclosure 4

NUREG/BR-0200

Public Petition Process

ADAMS Accession No. ML050900248

Enclosure 5

NUREG/BR-0215

Public Involvement in the Nuclear Regulatory
Process

ADAMS Accession No. ML003762531