

RAS 14947  
RAS 14948  
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RAS 14986

January 18, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE COMMISSION

January 18, 2008 (4:48pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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In the Matter of

AMERGEN ENERGY COMPANY, LLC  
(Oyster Creek Nuclear Generating Station)

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Docket No.  
50-219-LR

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In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.  
(Indian Point Nuclear Generating  
Units 2 and 3)

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Docket No.  
50-247-LR  
and 50-286-LR

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In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.  
(Pilgrim Nuclear Power Station)

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Docket No.  
50-293-LR

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In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.  
(Vermont Yankee Nuclear Power Station)

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Docket No.  
50-271-LR

**STATE OF NEW YORK'S RESPONSE IN SUPPORT OF THE  
PETITION TO SUSPEND LICENSE RENEWAL REVIEWS  
FOR OYSTER CREEK, INDIAN POINT, PILGRIM, AND  
VERMONT YANKEE NUCLEAR POWER PLANTS  
PENDING INVESTIGATION OF NRC STAFF REVIEW PROCESS  
AND CORRECTION OF DEFICIENCIES**

I. The State of New York submits this response in support of the petition dated January 3, 200[8], submitted by Nuclear Information and Resource Service; Jersey Shore Nuclear Watch, Inc.; Grandmothers, Mothers and More for Energy Safety; New Jersey Public Interest Research

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SECY-02

Group; New Jersey Sierra Club; New Jersey Environmental Federation; Riverkeeper, Inc.; Pilgrim Watch; and New England Coalition (collectively, "Environmental Groups").<sup>1</sup> The Environmental Groups' petition requests that the NRC suspend its license renewal reviews of four nuclear power plants – Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee – pending an investigation by the Nuclear Regulatory Commission ("Commission" or "NRC") of the NRC Staff review process and correction of deficiencies in that process. As noted in the above caption, Entergy Nuclear Operations ("Entergy") operates three of those plants: Indian Point, Pilgrim, and Vermont Yankee.

2. On November 30, 2007, the State of New York submitted a Notice of Intention to Participate and Petition to Intervene in the Indian Point relicensing matter. Entergy operates Units 1, 2, and 3 at Indian Point, located in Buchanan, New York. Approximately 20 million people reside or work within a 50-mile radius of these plants, the highest surrounding population density of any nuclear power station in the nation. The State of New York's petition in the Indian Point relicensing matter is pending before the NRC's Atomic Safety Licensing Board ("ASLB").

3. The NRC Staff review process and deficiencies that form the basis of the Environmental Groups' petition to suspend license renewal reviews for Indian Point and the three other plants were identified in the recent report of the NRC Office of the Inspector General ("OIG"), entitled Audit of NRC's License Renewal Program (OIG-07-A-15), dated September 6,

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<sup>1</sup>The State of New York makes this submission pursuant to 42 U.S.C. § 2021(l) as well as pursuant to its status as a petitioner in ASLB Proceeding No. 07-858-03-LR-BD01. Last week, the Commission issued a scheduling order directing that responses to the instant petition be filed by January 18, 2008. New York's application for party status in the Indian Point ASLB Proceeding has not yet been decided. The State's participation in this petition at this juncture does not waive any of the State's rights to participate as a party in the Indian Point ASLB Proceeding.

2007 ("OIG Report").

4. The OIG Report was based on an OIG audit that "was to determine the effectiveness of NRC's license renewal safety reviews." OIG Report, p. i. It identified a number of problems with the NRC Staff reviews of nuclear power plant relicensing applications, including the following:

- failure of NRC Staff to demonstrate that they conducted an independent safety review in over 97% of the 458 representative NRC safety reports sampled by the OIG;
- NRC Staff copying and pasting statements of licensees without demonstrating that they in fact came from the licensees' applications or that Staff independently verified those licensee statements; and
- failure of NRC Staff to follow up on commitments made by licensees in the application process.

5. The State of New York supports the concerns raised in the Environmental Groups' petition because the deficiencies in the NRC Staff reviews that were enumerated in the OIG Report go to the very heart of the NRC review of license renewal applications: safety and the protection of the public health and welfare. Unless those deficiencies are vigorously examined and addressed by the NRC, the aging management analysis and review that should be performed by NRC Staff for license renewal applications will fall far short of ensuring safety and protecting the public health and welfare.

6. The OIG report supports two possible conclusions. The first possible conclusion is that the Staff *has not done* the independent and thorough review of the license renewal applications and thus, there is no assurance that such an inadequately reviewed license renewal application provides reasonable assurance that the license renewal, if granted, will meet NRC safety requirements. The second possible conclusion is that the Staff *has done* the independent and thorough review required but has not chosen to document the work it did and has chosen

instead to merely parrot the language contained in the application and other pre-existing documents. At this point, no investigation has been conducted to determine which of these possibilities is correct and until that investigation has been undertaken, the Commission cannot legally permit pending license renewal applications to proceed and should consider suspending license renewals already granted until it is confident that those license renewals meet NRC safety standards. It is worth noting that in its recent response to the Staff response to the OIG report, OIG recommended that until there was evidence that the Staff was in fact conducting the necessary safety review, current pending license renewal applications should not be resolved. See S. Dingbaum to L. Reyes, January 7, 2008, Audit Report, Audit of NRC's License Renewal Program OIG-07-A-15, Status of Recommendations, at 1 ("Given that the agency has been aware of OIG's recommendations since May 24, 2007, OIG anticipates that NRC management's expectations and report-writing standards, while not finalized in guidance form until April 2007, will be reflected in license renewal audit, inspection, and safety evaluation reports issued henceforth. OIG will close Recommendation 1 upon receipt and review of the revised report-writing guidance to ensure the final product satisfies the recommendation.") ML 080070247.

7. The OIG report calls into question the adequacy of the Staff review of applications. The Staff has apparently not done a "root cause" analysis to determine how it happened that Staff's Safety Evaluation Report (SER) documents were demonstrably inadequate and that no internal Staff process detected this problem although it has existed for many years. Only with a "root cause" analysis, by an independent entity, will it be possible to know which of the two possible conclusions from Paragraph 6 above is correct and to know what solutions are needed to prevent a recurrence of this problem. The Staff's October 30, 2007, response to the OIG report

merely offers to fix the immediate problem of improving the quality of the SER, but fails to identify the “root cause” of the problem much less evaluate the implication of that “root cause” for the more serious question of whether license renewals have been granted to plants that do not actually meet NRC safety requirements.

8. The NRC Staff's inadequate review in relicensing matters is further compounded because of the NRC's narrow scope of issues to review in the first instance. In the State's view, the NRC has improperly limited the scope of review of license renewal applications – spanning from its adoption of regulations that narrowed the scope of issues that the NRC will review in a license renewal application to the NRC's issuance of a now-stale Generic Environmental Impact Statement (Generic EIS) that limits environmental reviews required by the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, et seq. The effect of these issue-limiting regulations is to place sole responsibility for assuring that license renewal applicants meet all required safety regulations that are outside the scope of licensing hearings with the Staff. The OIG report raises significant and profoundly troubling issues that require the Commissioners' attention and the suspension of the ongoing renewal proceedings.

9. The problem created by the Staff's failures, as documented by the OIG report, is far deeper than whether or not the Staff can write a good report that does or does not reflect the Staff's analysis and exercise of regulatory expertise. Because of the manner in which the NRC regulations limit the issues that can be reviewed in a license renewal proceeding, there are many safety issues that may only be addressed by the Staff and may not be reviewed by the public or subjected to full public hearings. See e.g. 10 C.F.R. §§54.30, 54.33 and 54.35, which, when certain preconditions are met, prohibit consideration of a wide range of relevant safety issues in the license renewal process. See Final Rule, Nuclear Power Plant License Renewal; Revisions,

60 Fed. Reg. 22,461, 22,464 (May 8, 1995). Instead, the NRC has expressed its desire to rely solely on the NRC Staff to identify, review, and resolve such safety issues. Accordingly, the quality of the NRC's Staff's review and analysis becomes all the more important.

10. Given the NRC's interpretation of Part 54, the OIG report takes on even greater importance since the report raises serious questions as to whether the NRC Staff has properly fulfilled its important responsibilities under the NRC's license renewal framework, especially with respect to those structures, systems, and components that the NRC interprets as outside the scope of Part 54. It is not possible on the record before OIG for the Commission to conclude that NRC Staff faithfully executed its responsibilities at several facilities that have undergone or are now going through a license renewal process, but the OIG findings certainly raise a substantial possibility that the inadequate SER was symptomatic of inadequate safety reviews. Thus, if the Staff is not doing its job, there is no effective means for the public to force an independent review of those safety issues in a public hearing before an impartial licensing board.

11. For example, even if all its many procedural hurdles could be overcome, 10 C.F.R. § 2.206 provides no viable or effective tool for public scrutiny of safety issues missed by the Staff in its license renewal review. That provision requires the petition to be filed with the very entity, the NRC Staff, whose failure to carry out its safety responsibilities necessitates the petition being filed. It is unrealistic to imagine that the Staff, or any one else, could, would, or ever has had sufficient impartiality to give serious consideration to a petition that is based, in the first instance, on the inadequacy of that party's own work.

12. Thus, the NRC Staff's inadequate review of an extraordinarily limited spectrum of issues for review only magnifies the absence of meaningful and thorough review for plants undergoing license renewal. The detailed and documented concerns raised by the OIG Report

regarding the NRC Staff's review of relicensing applications adds to the already flawed review process.

13. To date, the NRC Staff has completed its audit of the aging management program for Indian Point Units 2 and 3. That audit is a crucial step in the license renewal review process that the OIG Report examined. The NRC expects to issue Safety Requests for Additional Information (RAIs) by March 28, 2008. Following responses to the RAIs, the NRC expects to issue the SER (with open items) for Indian Point on September 5, 2008. The ACRS Committee is scheduled to meet on the SER with open items in October 2008, and the final SER is expected to be issued on March 27, 2009. Thus, the schedule for Indian Point can well accommodate the relief that New York seeks.

14. Unless the deficiencies noted by the OIG Report are addressed by the NRC itself – prior to any continued processing and review of Entergy's license renewal application for Indian Point – the State of New York and the general public do not have confidence that the review will be purposeful, meaningful, or thorough. The NRC must take steps to ensure and promote a different attitude and atmosphere within the agency for NRC Staff review of license renewal applications.

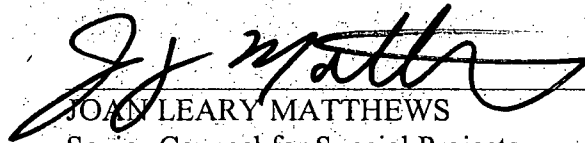
15. Accordingly, the State of New York respectfully requests that the Commissioners undertake the following actions:

1. Suspend the recently-initiated Indian Point license renewal proceeding until such time that the Commission has confirmed – in a transparent and documented manner – that the Staff will conduct a thorough, independent, and objective review of all safety issues relevant to license renewal, including issues, if any, that are precluded for consideration in the licensing hearing; and

2. Have an independent entity conduct a formal "root cause" analysis of the problems identified in the OIG Report, including whether the Staff's failure to properly document its review reflects that the required review was not conducted, and to implement whatever measures are necessary to correct the root cause, including assuring that NRC Staff have appropriate training to ensure a thorough commitment to a culture of safety.

Albany, New York  
January 18, 2008

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that on January 18, 2008, copies of the foregoing State of New York's Response in Support of the Petition to Suspend License Renewal Reviews for Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee Nuclear Power Plants Pending Investigation of NRC Staff Review Process and Correction of Deficiencies were served on the following by e-mail and first-class mail:

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