

February 4, 2009

Memorandum to: Chairman Klein
Commissioner Lyons
Commissioner Svinicki

From: Gregory B. Jaczko /RA/

SUBJECT: INDIAN POINT SIRENS – FINAL ENFORCEMENT ACTION

The issue of bringing Entergy into compliance with a provision of the 2005 Energy Policy Act, as implemented by a January 31, 2006 NRC order requiring backup power capability for the Indian Point Emergency Notification System (ENS), has been a difficult challenge. I am pleased to see Entergy finally came into compliance more than a year and a half after the January 2007 date the original NRC order required. I am deeply concerned, however, that the Nuclear Regulatory Commission is not going to conclude this episode with a clear signal to all licensees and the public that lengthy violation of Commission orders is not acceptable.

The staff is proposing a ‘final agency enforcement action’ that involves no actual enforcement against Entergy for its final seven months of violations of agency orders. It is true that Entergy finally did what they should have done from the beginning in this instance. Finally giving this matter the attention it deserved all along does not, however, absolve the licensee of its violation of NRC orders. To be consistent with previous Commission action on this issue, the staff should follow the direction provided in the Staff Requirements Memorandum from August 30, 2007. In that memorandum the Commission stated, “enforcement action should be taken” against Entergy for its failure to come into compliance with the Order requiring backup capability for the Indian Point ENS. The Commission went further and specified criteria that should be used to inform “final agency enforcement action.”

I propose the Commission, therefore, direct the staff to issue a final fine to Entergy for failure to meet Order EA-05-0190 and EA-07-0189 for an extended period of time. I believe the fairest approach to determining the appropriate fine is to direct the staff to consider the previous fines issued to Entergy for violating these orders over a nine month period of time (a total of \$780,000 for April 2007-January 2008) and use a proportional fine amount as the baseline for the additional almost seven month period of violations (January 2008-August 2008). Assessing an equivalent fine for the length of the violations in 2008 would result in an additional fine of approximately \$600,000.

The staff should use the \$600,000 figure as a starting point, and then apply the criteria stipulated by the Commission on August 30, 2007, and as is consistent with the enforcement policy, to determine how much credit and possible reduction in the fine Entergy should receive for its efforts to come into compliance with the January 2006 order. The factors noted in the Commission’s memo included, “an assessment of Entergy’s diligence in working with FEMA as well as FEMA’s assessment of the acceptability of the new ENS.”

I certainly understand the desire to move on from this difficult process, but we must do so in an appropriate manner that preserves the agency's regulatory authority.

SECY, please track.

cc: OGC
EDO
SECY