RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN

SUBJECT: COMGBJ-09-0001 – INDIAN POINT SIRENS – FINAL ENFORCEMENT ACTION

Approved _____ Disapproved __XX__ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _XX_ None ___

SIGNATURE

2/19/09
DATE

Entered on "STARS" Yes ✓ No ___

Chairman Klein's Comments on
COMGBJ-09-0001, "Indian Point Sirens – Final Enforcement Action"

I share Commissioner Jaczko's sense of frustration that bringing Entergy into compliance with NRC orders to implement a new Emergency Notification System with a backup power system at Indian Point has been a difficult challenge. However, I must agree with the staff's decision for closing out this enforcement action, and therefore, disapprove the proposal in COMGBJ-09-0001 to impose an additional fine.

It is unfortunate that Entergy's path toward compliance took an additional year and a half past the original due date and involved two Notices of Violations and accompanying Civil Penalties totaling $780,000. From my perspective, the Entergy management did not pay enough attention to this issue. It was only after NRC issued the second fine in the amount of $650,000 that the company took the measures needed to comply with the orders and fulfill its commitments. I supported the staff in exercising its authority to impose these fines.

With respect to Commission Jaczko's proposal, I understand his desire to levy an additional fine on Entergy for the seven-month period of noncompliance through August 2008. However, while the proposal for an additional fine may seem attractive to some, I am concerned that taking such an action would not enhance compliance and would amount to no more than an expression of regulatory outrage. As Commissioner Lyons referenced in his vote, the primary purpose of the NRC Enforcement Policy is to support the agency's safety mission by deterring noncompliance and encouraging prompt identification and correction of violation of NRC requirements. The NRC enforcement actions to date on this matter have effectively advanced these objectives.

After careful consideration of all the circumstances surrounding this matter, the staff has decided to close out the enforcement actions without taking additional action. The staff came to this logical conclusion in view of previous enforcement sanctions totaling $780,000 in civil penalties (which represents one of the largest civil penalties imposed by the NRC), Entergy's actions since the enforcement action in January 2008, and the results of the recent NRC inspection.

I share Commissioner Jaczko's desire to move on from this difficult situation and to do so in a "manner that preserves the agency's regulatory authority." In my view, the best way to bring a closure to this prolonged saga and preserve the agency's regulatory integrity is by supporting the staff's sound process and well reasoned decision.

Dale E. Klein / Date 2/19/09

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: COMGBJ-09-0001 – INDIAN POINT SIRENS – FINAL ENFORCEMENT ACTION

Approved ____ Disapproved __X__ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached __X__ None ___

Peter B. Lyons

2/6/09
DATE

Entered on "STARS" Yes __X__ No ___

Commissioner Lyons' Comments on COMGBJ-09-0001 –
Indian Point Sirens – Final Enforcement Action

I disapprove COMGBJ-09-0001, and in so doing, approve the staff's determination to close out the enforcement actions for the Indian Point siren system installation without taking additional enforcement action. I would also like to commend the staff for the conscientious manner with which it approached this case. In arriving at this decision, the staff considered the totality of the circumstances surrounding the installation of Entergy's new Emergency Notification System (ENS) as well as the direction the Commission provided in SRM-COMGBJ-09-003. The staff noted Entergy's diligence, albeit after the issuance of a Notice of Violation (NOV) and $650,000 civil penalty (CP) in January 2008. In response to the NOV-CP, Entergy provided a corrective action plan which included a schedule for completing various commitments for obtaining Federal Emergency Management Agency (FEMA) approval of the ENS. Entergy fulfilled its commitments and documented its implementation of every action requested by FEMA, as well as the remaining actions needed to implement the ENS. In August 2008, FEMA found Entergy's new ENS acceptable to be placed in service. The NRC's inspection completed in December 2008, found that the ENS was reliable and that Entergy had also satisfied an additional commitment contained in the Agency's August 2008 Confirmatory Action Letter.

The NRC Enforcement Policy points out that its primary purpose is to support the Agency's overall safety mission by deterring noncompliance and encouraging prompt identification and prompt, comprehensive correction of violations of NRC requirements. It also notes that enforcement actions are dependent on the circumstances of the particular case. In this case, I believe that Entergy's focused, appropriate, timely and effective responses following the imposition of the January 2008 NOV-CP demonstrated Entergy's recognition of the importance of full implementation of the new ENS. I believe the Agency's January 2008 NOV-CP accomplished its intended outcome and, therefore, additional enforcement action for Entergy's work after that time would be inappropriate.

2/6/09

Peter B. Lyons DATE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: COMGBJ-09-0001 – INDIAN POINT SIRENS – FINAL ENFORCEMENT ACTION

Approved _____ Disapproved __XX__ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached __XX__ None ___

SIGNATURE

02/25/09
DATE

Entered on "STARS" Yes ✓ No ___

Commissioner Svinicki's Comments on COMGBJ-09-0001
Indian Point Sirens – Final Enforcement Action

I disapprove COMGBJ-09-0001 and I support the determination by the NRC Office of Enforcement to close out the enforcement actions taken regarding Entergy's prior failure to implement the new Emergency Notification System (ENS) at Indian Point and not to take additional enforcement action. As documented in the Notification of Significant Enforcement Action, staff took note of the Commission direction in SRM-COMGBJ-07-0003 (dated August 30, 2007) that final agency enforcement action should be informed by the staff's assessment of Entergy's diligence in working with FEMA, as well as FEMA's assessment of the new ENS. In response to this prior Commission direction, staff concluded that "Entergy's due diligence, following the issuance of the $650,000 civil penalty, in working with FEMA to place the new ENS in service, was a factor in the staff's decision" to close out this enforcement action and that "the NRC has achieved its objective of bringing the licensee into compliance by the issuance of $780,000 in civil penalties."

I join Commissioner Lyons in reflecting on the primary objective of the NRC Enforcement Policy, which is to support the agency's overall safety mission by deterring noncompliance. As stated in the previous SRM, enforcement action is a matter that has been delegated to the staff. In this case, the agency's enforcement professionals have made a reasoned and logical determination that the closeout of this enforcement action supports the objectives of the NRC Enforcement Policy. I support them in that determination and find no utility in further punitive expression.

Kristine L. Svinicki 02/25/09