

March 18, 2009

Mr. Sherwood Martinelli  
351 Dyckman Street  
Peekskill, NY 10566-4631

Dear Mr. Martinelli:

In an e-mail addressed to Mr. Dale E. Klein, Chairman of the U.S. Nuclear Regulatory Commission (NRC), dated October 10, 2008, you submitted a petition request pursuant to Title 10, Section 2.206, "Requests for action under this subpart," of the *Code of Federal Regulations* (10 CFR 2.206), asking that enforcement action be taken against Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3). Your petition requests that the NRC order the licensee, Entergy, to take an immediate accounting of the Indian Point decommissioning funds, to deposit adequate funds to cover shortfalls, and to suspend all operations at Indian Point until Entergy is in full compliance with NRC regulations on decommissioning funds. You also requested that the NRC take enforcement action to shut down IP2 and IP3 until the NRC staff can complete a full examination of the reactor vessel heads and reactor internals, and to keep IP2 and IP3 in cold shutdown until the reactor vessel head replacement tasks have been fully implemented. Your petition request was referred to the Office of Nuclear Reactor Regulation's (NRR's) Petition Review Board (PRB) and is publicly available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML082890290.

On October 30, 2008, the NRR petition manager for your petition request informed you that the PRB's initial recommendation was to not accept your petition for review. On February 25, 2009, you participated in a teleconference with the PRB. The transcript of that teleconference is enclosed. The PRB considered that discussion in its review of your petition request for immediate action and in deciding whether the petition request meets the criteria for acceptance under 10 CFR 2.206.

With regard to decommissioning funds, 10 CFR 50.75(f)(2) requires licensees to submit a report every 2 years (or annually if within 5 years of the end of the license, which now applies to IP2). IP1, 2 and 3 submitted this report covering through the end of 2006 on March 29, 2007 (ADAMS Accession No. ML070950209) and again on May 8, 2008, in connection with the creation of a new holding company (ADAMS Accession No. ML081420032). The NRC reviewed these reports, and found that they show that the funds meet NRC requirements. Licensees are required to submit reports covering 2008 by March 31, 2009, and these reports will be publicly available. The NRC will review these reports and ensure that the decommissioning funds meet NRC requirements. Absent any specific facts on the value of the Indian Point funds, the PRB believes that the normal review cycle is sufficient to ensure that the funds meet NRC requirements.

With regard to reactor vessel welds and reactor vessel heads, the license for each plant prohibits operation with any leaks through any pressure boundary welds in the reactor coolant system (RCS), which includes the reactor vessels. The licenses for IP2 and IP3 are available in ADAMS (ADAMS Accession Nos. ML052720262 and ML052720273, respectively). In Appendix A of the license, Technical Specifications, Limiting Condition for Operation LCO 3.4.13 prohibits

pressure boundary leakage. The NRC resident inspectors enforce this requirement. The PRB is not aware of any pressure boundary leakage (leakage through a nonisolable fault in an RCS component body, pipe wall, or vessel wall) at IP2 or IP3. Nor is the PRB aware of any failing welds in the RCS. It is common for licensees to be unable to inspect 100 percent of each weld because of interferences, and to request relief for this condition. This does not indicate a problem with the weld itself. Absent any specific facts on failing welds, the PRB believes that the NRC staff properly reviewed and approved the reliefs that were granted to IP2 and IP3, and that the NRC inspectors are enforcing the requirement to have no RCS pressure boundary leakage. The PRB is not aware of any degradation of the vessel heads that would put the units in violation of NRC requirements. The licensee periodically inspects the vessel heads and reports the condition to the NRC. The last reports for IP2 and IP3 are available in ADAMS (ADAMS Accession Nos. ML081790154 and ML071510185, respectively).

The PRB decided not to accept this petition for review, on either contention, as you have provided insufficient facts to constitute a basis for the enforcement actions or to demonstrate that a safety problem or hazardous conditions exist.

Thank you for your interest in these matters.

Sincerely,

*/RA/*

Thomas Blount, Deputy Director  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:  
PRB Transcript dated February 25, 2009

cc w/encl: Distribution via Listserv

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Thomas Blount, Deputy Director  
 Division of Policy and Rulemaking  
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Package: ML090680196 Incoming: ML082890290 Letter: ML090680168 \*via email

OFFICE	LPL1-1/GE	LPL1-1/PM	LPL1-1/LA	LPL1-1/BC	Tech Editor
NAME	JGall	JBoska	ABaxter	MKowal	KAzariah*
DATE	3/6/09	3/18/09	3/17/09	3/17/09	3/17/09
OFFICE	2.206 Coord	DPR/DD			
NAME	TMensah*	TBlount			
DATE	3/18/09	3/18/09			

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

NRR PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

+ + + + +

WEDNESDAY

FEBRUARY 25, 2009

+ + + + +

10 CFR 2.206 PETITION ON INDIAN POINT NUCLEAR PLANT

BY MR. SHERWOOD MARTINELLI

+ + + + +

DOCKET NOS. 50-247 AND 50-286

+ + + + +

The conference call was held, Thomas B. Blount, Petition Review Board Chairman, presiding.

NRC HEADQUARTERS STAFF:

THOMAS B. BLOUNT, Chairman, NRR PRB

JOHN P. BOSKA, NRR/Petition Manager

JAY W. COLLINS, NRR

TANYA M. MENSAH, NRR/Petition Coordinator

MICHAEL A. DUSANIWSKYJ, NRR

MARK G. KOWAL, NRR

THOMAS K. McLELLAN, NRR

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JENNY M. LONGO, ESQ., NRC Office of General  
Counsel

SHERI BONE, DOE, on rotation to NRR

PETITIONER:

SHERWOOD MARTINELLI  
351 Dyckman Street  
Peekskill, New York 10566

NRC REGION I STAFF:

ANDREW A. ROSEBROOK, REGION I

LICENSEE: INDIAN POINT (ENTERGY)

MICHAEL BURNEY

P-R-O-C-E-E-D-I-N-G-S

1:03 p.m.

1  
2  
3 MR. BOSKA: Well, welcome Mr. Martinelli.  
4 This is the meeting of the Petition Review Board to allow  
5 you to discuss your petition with the Petition Review  
6 Board. I'd like to thank everyone for attending this  
7 meeting.

8 My name is John Boska and I'm the Indian Point  
9 Project Manager and we're here today to allow the  
10 Petitioner, Mr. Sherwood Martinelli, to address the  
11 Petition Review Board regarding his 2.206 Petition dated  
12 October 10, 2008. I'm the Petition Manager for Mr.  
13 Martinelli's petition and the Petition Review Board  
14 Chairman is Mr. Tom Blount.

15 As part of the Petition Review Board's review  
16 of this petition, Mr. Sherwood Martinelli has requested  
17 this opportunity to address the PRB. This meeting is  
18 scheduled from 1:00 p.m. until 2:00 p.m. The meeting is  
19 being recorded by the NRC Operations Center and will be  
20 transcribed by the court reporter. The transcript will  
21 become a supplement to the petition and the transcript will  
22 also be made publicly available.

23 I'd like to open this meeting with  
24 introductions. As we go around the room, please be sure to

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1 state your name, your position and the office you work for  
2 within the NRC for the record. I'll start off.

3 I'm John Boska, the Indian Point Petition  
4 Manager and I work in NRR.

5 MS. LONGO: My name is Jenny Longo. I'm a  
6 Senior Attorney in the Office of the General Counsel.

7 MR. KOWAL: Mark Kowal. I'm a Branch Chief in  
8 the Office of NRR.

9 MR. McLELLAN: Tom McLellan, I'm a Materials  
10 Engineer, NRR.

11 MR. COLLINS: Jay Collins. I'm a Senior  
12 Materials Engineer in the Office of NRR.

13 CHAIRMAN BLOUNT: Tom Blount. Deputy Director  
14 for the Division of Policy and Rulemaking in NRR and also  
15 PRB Chair.

16 MR. BURNEY: Mike Burney, Entergy  
17 Representative in Licensing.

18 MS. BONE: I'm Sheri Bone. I'm Acting Deputy  
19 Director in NRR.

20 MR. DUSANIWSKYJ: Michael Dusaniwskyj,  
21 Economist, NRR.

22 MR. BOSKA: And that's the introductions from  
23 NRC Headquarters. At this time, are there any NRC  
24 participants from the regional office on the phone?

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1 MR. ROSEBROOK: Yes, this is Andy Rosebrook,  
2 Senior Project Engineer, Region 1, DRP.

3 MR. BOSKA: Okay. Thank you, Andy. And the  
4 Licensee for Indian Point is Entergy. I heard someone  
5 previously, but the representative from Entergy, would you  
6 please introduce yourself?

7 MR. BURNEY: John, can you hear me?

8 MR. BOSKA: Yes.

9 MR. BURNEY: Mike Burney from Entergy,  
10 Licensing Department.

11 MR. BOSKA: All right. Thank you, Mike.

12 We have another NRC participant. Tanya, are  
13 you still with us?

14 MS. MENSAH: Yes, I am. Tanya Mensah, the  
15 2.206 Coordinator.

16 MR. BOSKA: All right. Thank you. And, Mr.  
17 Martinelli, would you please introduce yourself for the  
18 record?

19 MR. MARTINELLI: Yes. I'm Sherwood  
20 Martinelli, disgruntled citizen, tired of the rubber  
21 stamping and lies that the NRC routinely feeds us in the  
22 stakeholder community and tired of meaningless public  
23 participation that really doesn't get the attention it  
24 deserves.

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1 MR. BOSKA: Thank you, Mr. Martinelli. Are  
2 there any others on the phone that we haven't introduced  
3 yet?

4 (No verbal response.)

5 All right. I would like to emphasize that we  
6 need to each speak clearly and loudly to make sure the  
7 court reporter can transcribe the meeting and, if you do  
8 have something to say, please first state your name for the  
9 record. And at this time, I'll turn it over to the PRB  
10 Chairman, Mr. Tom Blount.

11 CHAIRMAN BLOUNT: Thank you. Good afternoon.  
12 Welcome to the meeting regarding a 2.206 petition submitted  
13 by Mr. Sherwood Martinelli. I'd like to first share some  
14 background on the process.

15 Section 2.206 of Title 10 of the Code of  
16 Federal Regulations describes the petition process, the  
17 primary mechanism for the public to request enforcement  
18 action by the NRC in a public process.

19 MR. MARTINELLI: That they never take.

20 CHAIRMAN BLOUNT: This process permits anyone  
21 to petition NRC to take enforcement type action related to  
22 NRC licensees or licensed activities. Depending upon the  
23 results of this evaluation, NRC could modify, suspend or  
24 revoke an NRC-issued license or take any other appropriate  
25 enforcement action to resolve a problem. The NRC staff's

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1 guidance for the disposition of 2.206 petition requests is  
2 in Management Directive 8.11 which is publicly available.

3 The purpose of today's meeting is to provide  
4 the Petitioner, Mr. Martinelli, an opportunity to comment  
5 on the Petition Review Board's initial recommendation and  
6 to provide any relevant additional explanation and support  
7 for that petition. This meeting is not a hearing nor is it  
8 an opportunity for the Petitioner to examine the PRB on the  
9 merits or the issues presented in the petition request. No  
10 decisions regarding the merits of this petition will be  
11 made at this meeting.

12 Following this meeting, the Petition Review  
13 Board will conduct internal deliberations to determine if  
14 there is a need to modify its initial recommendation. The  
15 outcome of this internal meeting will be documented in a  
16 letter to the Petitioner.

17 The Petition Review Board typically consists  
18 of a chairman, usually a manager at the Senior Executive  
19 Service level at the NRC. It has a petition manager and a  
20 PRB coordinator. Other members of the Board are determined  
21 by the NRC staff based on the content of the information in  
22 the petition request.

23 At this time, I would like to introduce the  
24 Board. As previously noted, I am Tom Blount, the Petition  
25 Review Board Chairman. John Boska is the Petition Manager

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1 for the petition under discussion today. Tanya Mensah is  
2 the Office's PRB Coordinator. We have Michael Dusaniwskyj  
3 from our Financial branch, Jay Collins and Tom McLellan  
4 from our Technical branches on reactor vessel and pipe  
5 integrity. From our regional office, we have Andrew  
6 Rosebrook. We also obtain advice from our Office of  
7 General Counsel represented by Jenny Longo.

8 As described in our process, the NRC staff may  
9 ask clarifying questions in order to better understand the  
10 Petitioner's presentation and to reach a reasoned decision  
11 whether to accept or reject the Petitioner's request for  
12 review under the 2.206 process.

13 Entergy, the Licensee for Indian Point Nuclear  
14 Plant, has been invited to the meeting and will be afforded  
15 an opportunity to ask clarifying questions.

16 MR. MARTINELLI: Of which I won't answer.

17 CHAIRMAN BLOUNT: For clarification, the  
18 Licensee is not part of the decision making process for the  
19 NRC's review of 2.206 petition. We invite the Licensee so  
20 that they are aware of the request for action against their  
21 facility and provide an opportunity to ask any questions so  
22 that they may understand the details pertaining to their  
23 facility.

24 I'd like to summarize the scope of this  
25 petition under consideration and the NRC's activities to

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1 date. On October 10, 2008, Mr. Martinelli submitted to the  
2 NRC a petition under 2.206 regarding Indian Point Nuclear  
3 Plant. In this petition request, Mr. Martinelli had two  
4 areas of concern.

5 With respect to the plant decommissioning  
6 funds, Mr. Martinelli stated that due to the recent  
7 economic downturn that it is likely there was a significant  
8 decrease in the decommissioning trust fund and Entergy may  
9 be in violation of the NRC's regulation on decommissioning  
10 funds. Mr. Martinelli asked the NRC to order Entergy to  
11 provide an accounting of decommissioning funds within 14  
12 days and to suspend plant operations if the decommissioning  
13 funds are below the required value and are not restored in  
14 30 business days.

15 Regarding area two, Mr. Martinelli's second  
16 area of concern was based on a recent relief request by  
17 Entergy on reactor coolant system weld inspections at  
18 Indian Point 2. Entergy stated they could not achieve 100  
19 percent coverage during volumetric examination of certain  
20 welds and asked for the NRC to approve relief from the  
21 required inspections. Mr. Martinelli stated that they are  
22 hiding unsafe conditions and requested that the NRC shut  
23 down both Unit 2 and Unit 3 until the NRC performs a full  
24 and complete examination of the reactor vessel heads and  
25 reactor internals.

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1 So allow me to discuss the NRC activities to  
2 date. On October 30, 2008, the NRR Petition Review Board  
3 discussed the petition using the acceptance criteria from  
4 Management Directive 8.11. Based on the information  
5 submitted in the petition, the PRB made an initial  
6 recommendation not to accept the petition for review as  
7 there were insufficient facts to constitute a basis for the  
8 enforcement action or to demonstrate that a safety problem  
9 or hazardous condition exists.

10 Mr. Boska informed Mr. Martinelli of the PRB's  
11 initial recommendation. Mr. Martinelli requested an  
12 opportunity to discuss the petition with the PRB, but asked  
13 for a delay until February 2009. The PRB granted the  
14 request for a delay.

15 As a reminder for the phone participants  
16 please --

17 MR. MARTINELLI: As a point of clarification,  
18 I would like it pointed out that that delay was granted  
19 based on my wife's medical issues that relate directly to  
20 her breast cancer that was caused by Entergy's failing  
21 reactors in Buchanan, New York.

22 CHAIRMAN BLOUNT: We understand that the delay  
23 was based on --

24 MR. MARTINELLI: I'm just asking that the  
25 record is clarified and reflects the facts as they exist.

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1 CHAIRMAN BLOUNT: The record notes your  
2 comment, Mr. Martinelli.

3 MR. MARTINELLI: Thank you.

4 CHAIRMAN BLOUNT: As a reminder for the phone  
5 participants, please identify yourself if you make any  
6 remarks as this will help us in the preparation of the  
7 meeting transcript that will be made publicly available.  
8 Thank you.

9 Mr. Martinelli, I'll turn the conversation  
10 over to you to allow you to provide any additional  
11 information you believe the PRB should consider as part of  
12 your petition.

13 MR. MARTINELLI: Well, on the first part on  
14 the financial issues, you people are going to do whatever  
15 it is that you want to do. I only have two words in  
16 regards to the first part. Citibank. Thank you. End of  
17 the discussion of Part 1.

18 Okay. Part 2, I've been through your song and  
19 dance before. I know the way it works. I have brought up,  
20 for instance, in previous filings and in previous phone  
21 calls to the NRC as example, okay, Entergy's efforts to  
22 deliberately hide boric acid appearances on the reactor  
23 vessel heads at Indian Point.

24 I'm not a scientist. I don't have access to  
25 the Indian Point facility. They promised that members of

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1 the public could arrange to tour their facility and look at  
2 the issues any time we wanted. They made that promise at  
3 the first licensing renewal meeting that was held and then  
4 immediately withdrew that offer when myself and members of  
5 FUSE USA attempted to avail ourselves of the offer that  
6 they made publicly and it is on the NRC's record for that  
7 meeting.

8 That being said, we have our sources, our  
9 people. All I'm going to suggest is that before you turn  
10 my petition down, okay, that (1) you look at known previous  
11 and past, as one example, boron leakage issues, at IP2 and  
12 IP3 and those leakage issues have occurred and been so  
13 notated in the NRC's records, okay, in numerous years  
14 including 2005, 2006 and 2007.

15 I also would strongly suggest that you look at  
16 the fact as was uncovered and proved by my organization  
17 that the NRC, or not the NRC but Entergy, does have on  
18 order, okay, two reactor vessel heads, okay, and does have  
19 replacement activity, refurbishment activities, that they  
20 claim in their license renewal application, there are no  
21 refurbishment issues with Indian Point in the license  
22 renewal even though they're planning on replacing these  
23 reactor vessel heads and annealing them in place at the  
24 site.

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1 But my point is you take the known boric acid  
2 issue, leak, okay, including, okay, boric acid leaks at  
3 Indian Point, okay, that are sitting here, not just with  
4 their tanks. We're talking boric acid leakage that has  
5 been noted at the coolant boundary as one example, okay,  
6 boric acid sites on the tops of the vessel heads. Remember  
7 Betsy Davis [means Davis- Besse] and then you tell me I'm  
8 stupid and I don't know shit and dismiss, okay, my  
9 allegations without even giving them a say.

10 You do whatever the fuck you want. Thank you  
11 and have a nice day. Any questions?

12 CHAIRMAN BLOUNT: Well, this is Tom Blount.  
13 First of all, while we appreciate your interest and  
14 concern, I'd ask you to refrain from some of the colorful  
15 language--

16 MR. MARTINELLI: You people have killed my  
17 wife. You've given her a death sentence.

18 CHAIRMAN BLOUNT: Understand.

19 MR. MARTINELLI: Any further questions?

20 CHAIRMAN BLOUNT: Well, thank you. At this  
21 time, does the staff have any questions for Mr. Martinelli?

22 MR. COLLINS: This is Jay Collins, Senior  
23 Materials Engineer. In your discussion, you identify that  
24 you had sources or additional information of boric acid  
25 being identified on the top of the head for Indian Point.

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1 MR. MARTINELLI: What I said was we have our  
2 sources. Now unfortunately the problem is the NRC puts  
3 citizen action groups in a really envious decision. Okay.  
4 We can either take and identify our moles inside of Indian  
5 Point Entergy's plant where Entergy will then take  
6 instantaneous, retaliatory measures, because we've seen NRC  
7 and the Federal Government have an absolute deplorable  
8 record when it comes to how they treat whistleblowers. Or  
9 if we don't give up the name, okay, you people dismiss our  
10 claims. Like I said, do what you want. I'm not giving up  
11 the names.

12 CHAIRMAN BLOUNT: Anyone else here at  
13 Headquarters have --

14 MR. MARTINELLI: When you people have another  
15 Davis-Besse on your hands, I will sit back and laugh and  
16 say, "I told you so" and tell the press to go back and look  
17 up today's meeting.

18 CHAIRMAN BLOUNT: Anyone from the regions have  
19 any questions?

20 MR. ROSEBROOK: No questions.

21 CHAIRMAN BLOUNT: Any questions from the  
22 Licensee?

23 MR. MARTINELLI: Don't bother asking. I won't  
24 answer their questions.

25 MR. BURNEY: No questions.

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1 CHAIRMAN BLOUNT: Are there any members of the  
2 public that have an interest?

3 Mr. Martinelli, do you have any final  
4 comments?

5 MR. MARTINELLI: You have my very succinct,  
6 very angry, very pointed information. You people do what  
7 you want. I know for a fact that they're seriously and  
8 serious issues with both reactor heads and with both  
9 reactor cooling cores and, in fact, which I've told you  
10 before the one test that Entergy has to pass or the NRC  
11 cannot relicense their reactors period in the discussion  
12 they cheated on and I've brought that to your attention as  
13 well.

14 So you people do what you want. I don't care  
15 anymore. You've already given my wife a death sentence.

16 CHAIRMAN BLOUNT: Mr. Martinelli, I'd like to  
17 thank you for your time. We appreciate you providing  
18 clarifying information on your petition. If there are no  
19 further questions, with that, I'd like to conclude the  
20 meeting.

21 Again, Mr. Martinelli, thank you very much.

22 MR. MARTINELLI: Thank you.

23 CHAIRMAN BLOUNT: Regions, thank you. Tanya,  
24 thank you. And other people on the line, have a nice day.

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(Whereupon, at 1:21 p.m., the above-entitled matter was concluded.)

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