

NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-247 AND 50-286

NRC-2008-0455

LICENSE NOS. DPR-26 AND DPR-64

ENERGY NUCLEAR OPERATIONS, INC.

ENERGY NUCLEAR INDIAN POINT 2, LLC

ENERGY NUCLEAR INDIAN POINT 3, LLC

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to petitions filed by Mr. Sherwood Martinelli, hereinafter referred to as the "Petitioner." The original petition, dated September 28, 2007, was amended by petition dated January 24, 2008. The NRC subsequently combined the above two petitions with a third petition dated March 30, 2008. The petitions were supplemented on December 21, 2007, and August 14, 2008, with transcripts of meetings between the NRC and the Petitioner. The petitions concern the operation of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point) owned by Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC, respectively, and operated by Entergy Nuclear Operations, Inc. (Entergy).

The petitions requested immediate suspension of the operating licenses for Indian Point Unit Nos. 2 and 3 and the imposition of daily civil penalties until the licensee implements a new emergency siren system with backup electrical power as required by the Energy Policy Act of 2005.

As the basis for the September 28, 2007, request, the Petitioner expressed his belief that the emergency siren system is the first and best chance that citizens will have in protecting

themselves and their families in the event of a terrorist attack and/or a significant radiological event at the Indian Point facility. The Petitioner noted that the Energy Policy Act of 2005 required that a backup electrical power supply be provided for the emergency siren system at Indian Point and that the licensee failed to meet successive implementation deadlines imposed by the NRC for January 30, April 15, and August 24, 2007. The Petitioner requested that (1) the Indian Point facilities be shut down until such time as the new emergency siren system with backup electrical power is fully operational and has met all Federal Emergency Management Agency (FEMA) and NRC requirements and (2) Entergy be fined \$130,000 per day from the date of his petition until Entergy complies with the NRC's Confirmatory Order dated January 31, 2006.

As the basis for the January 24, 2008, request that amended the original petition, the Petitioner cited Entergy's lack of adequate maintenance and aging management procedures leading to the discovery of significant corrosion on components of the new emergency siren system. The Petitioner requested that (1) the Indian Point facilities be shut down, (2) the operating licenses for the Indian Point facilities be suspended until they are in full compliance with their design basis threat, current licensing basis, and all NRC rules and regulations, and (3) Entergy be fined \$500,000 per day until the new siren system has been fully approved by all levels of government.

As the basis for the March 30, 2008, request, the Petitioner citing numerous discharges of radiological and chemical carcinogens, both legal and illegal, over an extended period of time that continue to expose the Petitioner, his family, and pets to contaminants. The Petitioner again requested that the Indian Point facilities be shut down and remain shut down until a large number of actions are completed including implementation of the new emergency siren system that has received all government approvals.

On December 21, 2007, and August 14, 2008, the Petitioner and the licensee met with the staff's Petition Review Board. The meetings gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues cited in the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to Entergy for comment on March 23, 2009. The staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation denied the Petitioner's request to suspend the operating licenses of the Indian Point Nuclear Generating Unit Nos. 2 and 3 and the Petitioner's request to impose daily civil penalties for the untimely implementation of the new siren system. In addition, the Petitioner's request to place Indian Point Unit Nos. 2 and 3 in cold shutdown, and to suspend the licenses of Indian Point Unit Nos. 2 and 3 until the licensee comes into full compliance with the design basis threat, the current licensing basis and all NRC rules, because of corrosion in siren components, was also denied. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of *Code of Federal Regulations* (10 CFR) Section 2.206 [DD-09-01], the complete text of which is available in Agencywide documents Access and Management System (ADAMS) Accession No. ML091210629 for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the

Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 29 day of May 2009.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation