

EDO Principal Correspondence Control

FROM: DUE: 09/25/09

EDO CONTROL: G20090487
DOC DT: 08/22/09
FINAL REPLY:

Sherwood Martinelli
Peekskill, New York

TO:

Borchardt, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

Leeds, NRR

DESC:

ROUTING:

2.206 - Entergy/Decommissioning Funds
(EDATS: OEDO-2009-0517)

Borchardt
Virgilio
Mallett
Ash
Ordaz
Burns/Gray
Carpenter, OE
Caputo, OI
Burns, OGC
Bell, OIG
Mensah, NRR
Marco, OGC

DATE: 08/27/09

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001

ERIDS: EDO-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: OEDO-2009-0517

Source: OEDO

General Information

Assigned To: NRR

OEDO Due Date: 9/25/2009

Other Assignees:

SECY Due Date: NONE

Subject: 2.206 - Entergy/Decommissioning Funds

Description:

CC Routing: NONE

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20090487

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

OEDO Monthly Report Item: NO

Process Information

Action Type: 2.206 Review

Priority: Medium

Signature Level: NRR

Sensitivity: None

Urgency: NO

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions:

Document Information

Originator Name: Serwood Martinelli

Date of Incoming: 8/22/2009

Originating Organization: Citizens

Document Received by OEDO Date: 8/26/2009

Addressee: R. W. Borchardt, EDO

Date Response Requested by Originator: NONE

Incoming Task Received: E-mail

Jaegers, Cathy

From: SMartinelliGHS@aol.com
Sent: Saturday, August 22, 2009 11:05 AM
To: SMartinelliGHS@aol.com; Mizuno, Beth; Roth(OGC), David; Harris, Brian; Jones, Andrea; OGCMailCenter Resource; Docket, Hearing; OCAAMAIL Resource; wdennis@entergy.com
Cc: acer8sac@comcast.net; remyc@optonline.net; gclary@lohud.com; deb@nukebusters.org
Subject: Formal 2.206 Request For Enforcement Action-Decommissioning Fund Short Falls.
Attachments: 2.206 Decommissioning.doc

To: Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

From: Sherwood Martinelli
351 Dyckman Street
Peekskill, New York 10566

Reas: Formal 2.206 Petition Seeking Enforcement Action Against Entergy and all other parties (including NRC staff who knowingly allowed Entergy's Decommissioning Funds to be significantly under funded) who directly and/or indirectly have deliberately mismanaged Decommissioning Funds, lied to the NRC in giving false assurances of said funds in various documents filed with the NRC, including but not limited to their License Renewal Applications, and to halt operation of its licensed facilities until such time as they bring Entergy's Decommissioning Funds for all its licensed nuclear reactors to the adequate MINIMUM (emphasis added) levels required under the rules and regulations as more adequately defined in 10 CFR Rules and regulations as are more fully understand and defined in, but not limited to 10 CFR 50.33(k), 50.75, 50.82(a)(4), 50.82(a)(8), and 50.82(a)(9). (This verified complaint addresses all Entergy directly and/or indirectly owned reactors that have under funded decommissioning funds, and more specifically, IP1, IP2, IP3 and Vermont Yankee.

Dear Executive Director:

Despite Entergy's efforts to protect the parent company's assets through mysterious and overly complicated corporate DUMMY CORPORATION that hold the license for its various and assorted poorly run nuclear facilities, one thing has become abundantly clear. Poor executive management clear up through the highest level of Entergy's executive staff, combined with poor financial investment decisions on the part of Entergy and its CHOSEN (EMPHASIS ADDED) financial investment advisors, their decommissioning funds HAVE BEEN FOR SOME TIME AND CONTINUE TO BE SEVERELY UNDERFUNDED (emphasis added) in direct violation of the rules and regulations meant to protect human health and safety. Even more disturbing, Entergy has lied about the adequacy of decommissioning funds in numerous documents filed with the NRC, including the financial assurances for Decommissioning they created as a part of each and every License Renewal Application they have filed with the NRC. Furthermore, with out swift and drastic enforcement action on the part of the NRC and its staff, human health and the environment around these licensed facilities is at risk, citizen safety at risk.

Qualification as Affected Member of Stakeholder Community

First, I am an affected Stakeholder who lives within three miles of the ancient, dilapidated and failing reactors IP1, IP2 and IP3 which are collectively known as Indian Point. I am a stakeholder because my families health has been negatively impacted by the callous, negligent actions of the licensee (Entergy) that have seen numerous leaks, failed spent pools, and cracked reactor vessel nozzles leak various contaminants including tritium and strontium 90 into our community's involvement, thus GREATLY INCREASING our risks to various and assorted cancers, lead to the breast cancer diagnosis of my own wife. I am further a stakeholder, because Entergy has or is attempting to place all of its poorly run nuclear assets into a new dummy shell corporation (that holds no viable assets other than the failing reactors themselves) which creates a public safety issue for all stakeholder communities as a collective group due to the reality that the same management is running all the Decommissioning Funds, all of Entergy's Decommissioning are below MINIMUM LEVELS required by law and 10 CFR Rules and Regulations, thus putting all of us in a situation of having adequate funds available to restore these nuclear holocaust sites to FULL and UNRESTRICTED USE at some point in the future as is required by the terms of the licenses granted, and the Rules and Regulations by which those licenses are governed by.

Specific Enforcement Action Sought

1. Entergy's License to Operate be temporary suspended for every individual nuclear reactor that is currently in a situation of having Decommissioning Fund Short Falls.
2. Entergy be ordered to use its profits from operations, loans secured from viable lending institutions, rather than being allowed to seek unacceptable means of redress that would include (as is wrongfully envisioned by the NRC) additional license extension, a unfair and overly burdensome tariff/rate increase to the utility's customer base, or allowing them to use overly optimistic and false future predictions of growth in the Decommissioning Funds they currently have invested in Wall Street.
3. NRC and its staff complete a full and complete review of all documents filed by or on behalf of Entergy which are related (directly or indirectly) to financial assurances, including specifically those Financial Assurance documents filed as a part of license transfer and license renewal filings for misrepresented, false and/or untrue statements and assurances as relates to the adequacy of funds for Decommissioning, and when and if it is ascertained that Entergy, its assigns, heirs and legal counsel have in fact deliberately or through sheer ignorance, stupidity of negligence have in fact and deed provided false statements, stakeholder formally requests, as is allowed under the Rules and Regulations the strictest enforcement action allowed, which is TERMINATION OF LICENSE to OPERATE (emphasis added) and criminal prosecution of all those involved. The NRC is reminded here, that its own rules state that false statements and misrepresentations in filings before the agency are the most significantly and severe violation there is.
4. All current Entergy Filings currently before the NRC involving License Renewal, License Transfers, Amendments to License, or Exemption Requests be placed on Administrative Hold until such time as said Licensee's (licenses) are brought back into compliance by meeting MINIMUM DECOMMISSIONING FUND ASSURANCE LEVELS as are outlined and spelled out in 10 CFR Rules and Regulations. Forward movement on any of these current filings while the license is FAILING TO MEET ITS BARE MINIMUM FINANCIAL REQUIREMENTS places the host communities at grave and unacceptable risk.
5. Any NRC staff who deliberately ignored false and untrue statements on Financial Assurances be immediately terminated from employment, and their criminal activity reported to the NRC Inspector General's Office for review and possible criminal prosecution as is allowable under the law.
6. NRC orders Entergy to make public any and all financial documents necessary for us as stakeholders to assure ourselves, and known conclusively that Entergy's claims and/or assurances of Decommissioning Fund adequacies are in fact true.

7. NRC takes enforcement action that orders Entergy to be in full compliance with 10 CFR Rules and Regulations, have made their Decommissioning Funds whole within a period of 60 days, or have their licenses to operate terminated, the reactors permanently closed.

Outline of Allegations

1. NRC staff have been remiss in their duties, have failed to adequately police their own licensees when it comes to the adequacy of funds for Decommissioning. In a recent report, NRC wrongfully and perhaps criminally seeks to provide false cover for their licensees by claiming the recent economic disasters affecting the American financial markets coupled with unexpected drops in Decommissioning Funds invested in the Stock Market are the major contributing factor to these Decommissioning Fund deficiencies. In reality, NRC's job is to assure compliance with its rules and regulations, to assure that its licensees are meeting THE MINIMUM standards and amounts of money set aside for Decommissioning. It is not the NRC's job to make excuses for its licensees, nor to excuse them from these minimum standards when the licenses fail to meet the minimum standards, thus putting themselves in violation of their license terms.
2. From almost day one of Entergy's entrance into the Nuclear Utility industry, various stakeholders in host communities have filed volumes of documents alleging inadequate funding of the Decommissioning Funds, all of which have been callously and/or dismissed by the NRC, usually on technicalities that NRC staff have been instructed to look for as a means of ignoring citizens concerns about the safety of these antiquated, and failing reactor sites.
3. One does not have to look far to find a complete failure on the part of the NRC to police their licensees, to validate their financial assurance statements/documents when it comes to having adequate funds on hand to assure Decommissioning to minimum standards as it outlined in 10 CFR, one does not have to be a rocket scientist to realize NRC Licensees as a whole, and specifically Entergy have egregiously, negligently and perhaps dishonestly used fuzzy if not illegal accounting methods and poor investment decisions that have led to them having overall Decommissioning shortfalls running into the HUNDREDS OF MILLIONS of dollars while at the same time paying record dividends to their shareholders from the money that has wrongfully been siphoned away from the Licensee DUMMY CORPORATIONS to their parent company even though they knew their decommissioning funds were extremely inadequate. Rather than abide by the minimum Decommissioning Fund standards and amounts as outlined in the Rules and Regulations, they instead chose to hide the shortcomings, come up with false/fake assurances which they provided to the NRC and other federal regulators.
4. The NRC, NEI and its licensees including specifically Entergy have acted in an incestuous fashion that has placed the stakeholder communities in grave peril. They together and separately have submitted false statements, knowingly deceived stakeholder communities, placed stock holder interests and profits ahead of rules and regulations as well as public health and safety in the name of continuing their operations, in violation of the Rules and Regulations that have established MINIMUM DECOMMISSIONING FUND STANDARDS AND AMOUNTS. This fact and allegation is born out, is defacto true upon its face when you look at the NRC's own documents on the subject that admit no less than 26 of America's 104 reactors have Decommissioning Shortfalls with those shortfalls running the gambit from \$47-\$150 Million dollars per facility...this is even more disturbing when you realize NRC's inadequate standards as defined by their regulations outline only MINIMUM STANDARDS OF ACCEPTABILITY. 26 reactor licensees with Decommissioning Fund Shortfalls amounts to a 25 PERCENT FAILURE RATE, and that rate of failure in adequate enforcement on the part of the NRC is simply unacceptable, is absolute proof positive that NRC is failing in their charge to protect Human Health and the Environment.
5. Entergy's own shortcomings represent the lion's share of the nuclear industry's Decommissioning Shortfalls. Further troubling, is Entergy's recent public releases of their financial situation which show their profits have dropped a startling 18 percent, that has also seen their stock value (and thus their assets) drop significantly as their Enron like house of cards threatens COLLAPSE. This reality, perhaps

more than any other makes it imperative that the NRC take swift and drastic action to bring Decommissioning Funds up to their own minimum standards, enforcement action to include temporary suspension of the licenses to operate, and criminal prosecutions where appropriate.

6. The NRC has lost sight of its oath to protect human health and the environment, Are wrongfully granting exemptions from rules and regulations in the name of saving a nuclear industry that sits on the verge of financial collapse. As host communities, are one and only partial safety net is NRC's promise to hold their licensees accountable to minimal Decommissioning Funds to decommission the sites and return them to full unrestricted use in a **TIMELY FASHION**. Entergy's Decommissioning Fund short falls put that one (and most important one) assurance at **GRAVE RISK**, thus needlessly threatening public health and safety. The NRC's plan to figure out ways that their licensees can come into compliance is not what they **ARE CHARGED WITH**. They are, as an agency charged with **ENFORCING THE RULES AND REGULATIONS OF 10 CFR**. Entergy is in direct violation of those rules and regulations, are failing to meeting the **MINIMAL STANDARDS** and **AMOUNTS** for Decommissioning. In the past four years, Entergy the corporation has stripped away and funneled Billions of dollars from their nuclear holdings, leaving the shell corporations all but bankrupt. With those kinds of profits flowing upwards to the parent company, there is **NO REASON** why their Decommissioning Fund Accounts should not be made hold, there is no reason for them to be in **NON COMPLIANCE** with the NRC's rules and regulations regarding minimum standards for these funds.

For the reasons outlined herein, stakeholder Sherwood Martinelli respectfully requests that the NRC take **IMMEDIATE EMERGENCY ENFORCEMENT ACTION** against their licensee Entergy and its various and assorted dummy/shell corporations that are holding their nuclear assets, and the NRC licenses to operate them.

Respectfully Submitted,

Sherwood Martinelli
351 Dyckman Street
Peekskill, New York 10566
(914) 734-1955

*NOTE-If you are a citizen stakeholder living within 25 miles of a Entergy Facility that has significant Decommissioning Fund shortages, you are encouraged to use this 2.206 Petition as a model to create and file your own Formal Complaint and Request For Enforcement Action. It is time that the NRC as a Federal Agency charged with protecting human health and the environment begin **ENFORCING ITS LAWS**, rather than protecting its licensees (and thus their jobs) at the risk of Human Health and the Environment. As a singular stakeholder, we are constantly ignored, our voice dismissed, but as a collective group filing numerous demands for Enforcement Actions against licensees in violation of the Rules and Regulations, we can once again return integrity to the NRC, and assure ourselves that our risks as host communities are kept to a bare minimum.

Citizens are further encouraged to email a copy of this document to your friends, families, and members of the press that you may have a relationship with as Anti-Nuclear Activists. The time for Nuclear Safety Accountability as relates to Decommissioning Funds is upon us, and as American Citizens in nuclear reactor communities, we have a responsibility to hold licensees accountable, have a duty to hold the NRC accountable, make sure that they are **ENFORCING THE RULES AND REGULATIONS** that are meant to keep us and our stakeholder communities safe and healthy...a job that the NRC is failing miserably at.

Certificate of Service

As is required by the NRC, a true and accurate copy of the above Formal Verified Complaint and 2.206 Petition For Enforcement have been sent via electronic email to the following parties.

Respectfully,

Sherwood Martinelli

William C. Dennis*
Assistant General Counsel
Entergy Nuclear Operations, Inc.
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White Plains, NY 10601
(E-mail: wdennis@entergy.com)

Sherwood Martenelli*
351 Dyckman Street
Peekskill, NY 10566
(E-mail: SMartinelliGHS@aol.com)

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U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission

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U.S. Nuclear Regulatory Commission
Office of the General Counsel
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David E. Roth, Esq.
Brian G. Harris, Esq.
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(E-mail: david.roth@nrc.gov)
(E-mail: brian.harris@nrc.gov)
(E-mail: andrea.jones@nrc.gov)

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Respectfully Submitted,

Sherwood Martinelli
351 Dyckman Street
Peekskill, New York 10566
(914) 734-1955

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Respectfully,

Sherwood Martinelli

William C. Dennis*
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
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(E-mail: wdennis@entergy.com)

Sherwood Martenelli*
351 Dyckman Street
Peekskill, NY 10566
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U.S. Nuclear Regulatory Commission
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U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
(E-mail: OGCMailCenter@nrc.gov)

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David E. Roth, Esq.
Brian G. Harris, Esq.
Andrea Z. Jones, Esq.
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Received: from mail2.nrc.gov (148.184.176.43) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.393.1; Sat, 22 Aug 2009
11:05:57 -0400
X-Ironport-ID: mail2
X-SBRS: 4.5
X-MID: 6357744
X-IronPort-Anti-Spam-Filtered: true
X-IronPort-Anti-Spam-Result:
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(mail_out_v42.5.) id f.c24.67d16f81 (32915); Sat, 22 Aug 2009 11:05:31 -0400
(EDT)
From: <SMartinelliGHS@aol.com>
Message-ID: <c24.67d16f81.37c16339@aol.com>
Date: Sat, 22 Aug 2009 11:05:29 -0400
Subject: Formal 2.206 Request For Enforcement Action-Decommissioning Fund Short Falls.
To: SMartinelliGHS@aol.com, bnm1@nrc.gov, david.roth@nrc.gov,
brian.harris@nrc.gov, andrea.jones@nrc.gov, OGCMailCenter@nrc.gov,
HearingDocket@nrc.gov, ocaamail@nrc.gov, wdennis@entergy.com
CC: acer8sac@comcast.net, remyc@optonline.net, gclary@lohud.com,
deb@nukebusters.org
MIME-Version: 1.0
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X-Mailer: AOL 9.1 sub 5006
X-Spam-Flag: NO
X-AOL-SENDER: SMartinelliGHS@aol.com
Return-Path: SMartinelliGHS@aol.com