

EDO Principal Correspondence Control

FROM: DUE: 01/28/10 EDO CONTROL: G20090722
DOC DT: 12/28/09
FINAL REPLY:

Sherwood Martinelli
Peekskill, New York

TO:

Chairman Jaczko

FOR SIGNATURE OF :

** GRN **

CRC NO:

Leeds, NRR

DESC:

ROUTING:

2.206 - Decommissioning Funds for Indian Point
(EDATS: OEDO-2009-0787)

Borchardt
Virgilio
Mallett
Ash
Mamish
Burns/Gray
Zimmerman, OE
Caputo, OI
Burns, OGC
Mensah, NRR
Marco, OGC

DATE: 12/30/09

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

Ref. G20090487

Template: EDO-001

E-RMS: EDO-01

EDATS Number: OEDO-2009-0787

Source: OEDO

General Information

Assigned To: NRR	OEDO Due Date: 1/28/2010
Other Assignees:	SECY Due Date: NONE
Subject: 2.206 - Decommissioning Funds for Indian Point	
Description:	
CC Routing: OGC; OE; OI	
ADAMS Accession Numbers - Incoming: NONE	Response/Package: NONE

Other Information

Cross Reference Number: G20090722, Ref. 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
	Sensitivity: None
Signature Level: NRR	Urgency: NO
Approval Level: No Approval Required	
OEDO Concurrence: NO	
OCM Concurrence: NO	
OCA Concurrence: NO	
Special Instructions:	

Document Information

Originator Name: Sherwood Martinelli	Date of Incoming: 12/28/2009
Originating Organization: Citizens	Document Received by OEDO Date: 12/29/2009
Addressee: Chairman Jaczko	Date Response Requested by Originator: NONE
Incoming Task Received: E-mail	

Simonian, Niry

From: SMartinelliGHS@aol.com
Sent: Monday, December 28, 2009 3:07 PM
To: Boska, John; Docket, Hearing; Sheehan, Neil;
john@heyokamagazine.com; acer8sac@comcast.net;
remyc@optonline.net
Subject: 2.206 Petition (Request for Enforcement Action) Decommissioning Fund

Dear NRC:

As you are aware, I have a currently pending 2.206 Petition with the NRC as relates to the Decommissioning Fund inadequacy as relates to Entergy owned and operated nuclear reactors. That petition was accepted in part, and denied in part. Specifically, my allegations as relates to IP1, IP2 and IP3 were denied with no reason given. One can assume that denial of my claims as relates to these licensed sites was an NRC belief/decision that said Decommissioning Funds for the IP reactors was/is adequate. Yet, in a letter dated December 28th, 2009, the NRC admits the Decommissioning Fund for at least one Indian Point Reactor fund is inadequate to the tune of \$36,000,000 (thirty six million dollars). Specifically, the letter states in part:

Based on the Nuclear Regulatory Commission (NRC) staff's analysis of the report, the NRC staff estimated a projected shortfall in decommissioning funding assurance of \$38.6 million for Indian Point Nuclear Generating Unit No.2 (IP2). See ADAMS Accession No. ML091940387 for details on that calculation. By letter dated June 18, 2009, ADAMS Accession No. ML091630533, the NRC informed Entergy that there may be a shortfall in the decommissioning trust fund (DTF) for IP2 and asked Entergy to provide more information on the DTF.

On June 29, 2009, NRC staff held a conference call with Entergy to discuss the DTF. See ADAMS Accession No. ML091890807 for a summary of the call. On July 22, 2009, NRC staff held a second conference call with Entergy. See ADAMS Accession No. ML0921 00643 for a summary of that call. By letter dated August 13, 2009, ADAMS Accession No. ML092260736, Entergy provided additional information on the decommissioning funding. The NRC staff has reviewed the submittal, which outlines Entergy's plan of action to cover shortfalls in providing decommissioning funding assurance and/or decommissioning funding realized in the report for IP2 that was submitted on March 30, 2009.

The admissions found in this letter actually VERIFY my allegations which were previously filed in August 2.206 Petition for Enforcement Action. In short, this letter PROVES MY CLAIMS AGAINST THE LICENSEE, MAKES THEM DEFACTO GUILTY OF MY ALLEGATIONS. It is furthered pointed out for the record:

1. Entergy included false and or misleading information in the License Renewal Applications as relates to the adequacy of the Decommissioning funds at their various and assorted reactor sites, thus lying and or misrepresenting material facts to the NRC. A REAL INSPECTION by the NRC would prove they knew of these shortfalls in the Decommissioning Fund back when they filed the License Renewal Applications, but instead FILED FALSE ASSURANCES in their application....A VERY SERIOUS VIOLATION of the NRC's rules and regulations.

2. Entergy at its various and assorted licensed sites has total Decommissioning Fund shortfalls in excess of \$250,000,000 (one quarter of a BILLION DOLLARS)...it is unfortunate that the NRC allows Entergy when it is convenient to approach the management of their reactors as a FLEET of reactors, but when it comes to a financial mismanagement that has allowed for a collective shortfall in Decommissioning Funds for their nuclear reactors in excess of a quarter billion dollars, the NRC wants to treat each facility separately, and further allows the company to use accounting measures of skeptical value that allow them to push off their financial obligations for another SIXTY YEARS...in part, the December 28th letter states in part:

Based on the information provided by Entergy on August 13, 2009, the NRC staff finds that IP2, as of July 31, 2009, has a DTF balance of \$326.9 million. Entergy proposes the use of safe storage (SAFSTOR) from IP2's license termination in 2013 through 2063, with 10 additional years through to 2073 dedicated towards decommissioning activities. This allows the DTF to increase during the SAFSTOR years. The NRC staff has reviewed the licensee's plan and determined that the licensee, as of August 13, 2009, provides reasonable assurance of adequate decommissioning funding at the time of permanent termination of operations with the proposed use of SAFSTOR. Accordingly, the NRC staff concludes that no

further action is required at this time to demonstrate adequate decommissioning funding assurance, according to NRC standards. for IP2.

This comment contained within the NRC's letter proves conclusively that Entergy is playing a shell game when it comes to their Decommissioning Funds.

1. SAFSTOR has not been approved for IP 2 or IP3. Nor could it be approved for SAFSTOR without the requisite public meetings and hearings. In short, accepting their THEORY OF SAFSTOR in their figures would amount to the NRC making a decision it CANNOT MAKE without adequate public involvement. Accepting SAFSTOR at this point in the process, allowing their Licensee to claim SAFSTOR as the model for its financial assurances hides what could be an additional fund shortfall in excess of 100 million dollars if Decommissioning started sooner than the expected 2063.
2. Entergy's creative accounting assumes putting IP2 into SAFTOR at the termination of its license in 2013. At best, this bold face deceit on the part of Entergy, as they have a currently pending License Renewal Application for this facility moving through the NRC's biased License Renewal RUBBER STAMPING PROCESS as this letter is being typed. The NRC as of today has APPROVED EVERY LICENSE RENEWAL APPLICATION submitted to them. Therefore, Entergy would have to submit a plan to make the Decommissioning Fund whole that includes the waste's accumulated over an additional 20 years of operation at the facility, which can only INCREASE the costs of decommissioning. As example, Entergy has plans to replace the reactor heads for IP2 and IP3, which creates two additional and significant amounts of waste that will have to be dealt with in Decommissioning. Further, a cursory review of available public information would lead a reasonable mind to conclude that the turbines will have to be fully replaced in the 20 year period of operation as well. Lastly, in addition to 20 years accumulative spent fuel, it is pointed out that the Dry Cask storage units being employed for TEMPORARY SPENT FUEL STORAGE are only rated for 20 years, which suggests all spent fuel placed into these storage containers would have to be transferred into other containers three full times during any period of SAFSTOR....an expense that HAS NOT BEEN FACTORED into the Decommissioning Costs for any licensed NRC facility.
3. For Entergy to rely on their current financial plan for making the Decommissioning Fund whole, they would need to immediately withdraw their pending application for License Renewal, as License Renewal brings into serious doubt any and all of their current dubious formulas for bringing their Decommissioning Funds into minimal acceptable standards.
4. Additionally, and perhaps most importantly, it is pointed out that the NRC and its staff are not QUALIFIED to properly evaluate the complex formula and accounting used in ascertaining the compliance or noncompliance of their licensees as relates to the adequacy of these Decommissioning Funds, as can be witnessed by what is best described as a cursory review of submitted documents that are then accepted as accurate ON GOOD FAITH. I would remind the NRC of Reagan's adage of trust but verify, and the adequacy of Entergy's plans can only be ascertained through a full and complete review and inspection of their financial plan through outside independent verification by financial experts outside of the biased inner circles of the NRC, NEI, EPRI and the nuclear industry.
5. Furthermore, Entergy cannot have its cake and eat it too...in their proposed Decommissioning Fund Adequacy Report, their figures are BASED UPON CLOSING IP2 in 2013. If in fact and deed this were its plan, they are in violation of 50.75 (f) which states in part:

in accordance with section 50.75 (f), 5 years before permanent cessation of operations, a licensee must submit a preliminary decommissioning cost estimate that includes plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning.

Entergy has not submitted this Preliminary Decommissioning Cost Estimate for IP2, IP3 or Vermont Yankee as three examples, yet they are submitting fatally flawed Decommissioning Fund Adequacy claims based on the FALSE ASSUMPTION that they sites will be closing within a period of less than five years. If as their Decommissioning Assurance Plan claims, they are going to shut the facility down in 2013, they are in violation of the 10 CFR Rules that Require the filing of a Preliminary Decommissioning Cost Estimate...if on the other hand, as we believe, they are planning on operating the Indian Point and Vermont Yankee Reactors for another 20 years, then their entire Decommissioning Fund Adequacy Report is a fairy tale of the worst kind imaginable, with the safety and health of our community being recklessly put at risk by a Regulatory Agency that has set aside its core value of placing public safety above all else when it comes to regulating their licensees.

Before I lay out the Enforcement Actions sought, I want to dot my eyes by qualifying myself as a qualified stakeholder. I live within the 10 mile PEAK FATALITY ZONE around Entergy's failing Indian Point Reactors, have seen cancer visited my family four times in the past three years as a result of this close proximity to these Nuclear Abortion Machines, have suffered first hand as a result of the NRC's ALARA program that accepts a certain number of human deaths for the supposed convenience of nuclear power.

As a stakeholder, I seek the following Enforcement Actions against Entergy:

1. Immediate Suspension of all licensed activities at any and all Entergy Licensed nuclear reactors that have a Decommissioning Shortfall...shutdown of licensed activities to be avoided ONLY IF ADEQUATE FUNDS ARE IMMEDIATELY DEPOSITED to make these funds both whole and current. A letter from the company in the form of a future promise IS NOT ADEQUATE, nor WITH THE PAPAR IT IS WRITTEN ON.
2. If Entergy is claiming Adequacy of funds based upon it's licensed activities terminating at the end of their CURRENT license expiration date, they must be required to chose one of the two enforcement actions I have outlined below:
 - A) Withdraw any pending License Renewal Application currently on file, or that is pending with the NRC.
 - B) Admit that they lied to the NRC, attempted to deceive the NRC by submitting false/inaccurate or misleading data in their Decommissioning Adequacy Fund, and as a part of this admission, agree to pay a fine of not less than FIVE BILLION DOLLARS, and immediately submit new accurate reports on all their licensed facilities, including as a part thereof, the means and mechanisms (other than self assurances) to make their Decommissioning Funds whole within a period not to exceed 180 days.

The Commercial Nuclear Industry is barely 50 years old, and the NRC giving ANY LICENSEE some 60 years from the EXPIRATION OF THEIR LICENSE (a total of 100 years) to make their Decommissioning Funds whole is unacceptable! Entergy and its predecessors have had almost 40 years (1973-2013) to make their Decommissioning Funds whole enough to meet THE MINIMAL STANDARDS outlined in the NRC's rules and regulations. The NRC wanting to give them another 60 years to meet the obligation suggests that the NRC is no longer a protector of Human Health and the Environment, but instead has become a pariah, a predator out to kill any citizen that dares to say "Enough" already....and yes, we have enough cancer deaths in our communities to call the NRC murderers, and giving their licensees a total of 100 years to make their commissioning funds WHOLE is proof of the BLOOD of this agency's hands, proof of the taint that soils its reputation in host communities.

In short, this Formal Request for Enforcement seeks to have Decommissioning Funds MADE WHOLE TODAY, rather than allowing the NRC to simply push the ball down the road for another SIXTY YEARS.

Respectfully Submitted,

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From: <SMartinelliGHS@aol.com>

Message-ID: <d4d.5c26f825.386a69dc@aol.com>

Date: Mon, 28 Dec 2009 15:06:52 -0500

Subject: 2.206 Petition (Request for Enforcement Action) Decommissioning Fund

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