



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 3, 2010

The Honorable Nita Lowey  
United States House of Representatives  
Washington, DC 20515

Dear Congresswoman Lowey:

This letter responds to your request for an explanation of the NRC's letter, dated March 16, 2010, to Ms. Susan Shapiro. On March 1, 2010, Ms. Shapiro submitted a petition that sought a formal adjudicatory hearing regarding decommissioning funding for the Indian Point Unit 2 facility. Ms Shapiro invoked the Atomic Energy Act and the Nuclear Waste Policy Act. As the Secretary of the NRC explained in her March 16, 2010 response, Ms. Shapiro's petition did not establish any grounds for an NRC hearing.

Specifically, Ms. Shapiro's petition challenged statements contained in an NRC staff letter, dated December 28, 2009. A copy of that letter is enclosed for your review. In that letter, the NRC staff described its review of the licensee's "Biennial Decommissioning Funding Report," which the licensee submitted on March 30, 2009, as required by NRC regulations. The NRC staff concluded that the licensee's submission, as supplemented, "provides reasonable assurance of adequate decommissioning funding at the time of permanent termination of operations with the proposed use of SAFESTOR," which is one of the NRC-approved methods of decommissioning. Thus, the NRC staff found that the licensee was in compliance with the applicable NRC regulations.

Ms. Shapiro's petition asked that she be allowed to intervene in a hearing to challenge the staff's finding. The Atomic Energy Act ("AEA") requires the NRC to provide a hearing opportunity only for the "granting, suspending, revoking or amending of any license ... and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees ..." But, as the Secretary pointed out in her March 16, 2010 response, the NRC staff's decommissioning funding finding falls in none of those categories. The NRC staff letter of December 28, 2009, does not "grant" the licensee a new license for the Indian Point 2 facility and does not "amend" the current Indian Point Unit 2 license in any way. Instead, the letter states simply that the licensee's current decommissioning plans for the Indian Point 2 facility are in compliance with the applicable NRC regulations. Because the December 28, 2009 letter does not give the licensee permission to do anything not already authorized by the Indian Point Unit 2 license, the hearing provisions of AEA Section 189a do not apply to any NRC "finding" stated in that letter. In short, there was no proceeding in which Ms. Shapiro could intervene.

Ms. Shapiro's Petition also requested a hearing under the provisions of the Nuclear Waste Policy Act ("NWPA") of 1982, specifically, Section 134 of the Act. But as the Secretary also

pointed out in her March 16, 2010 response, this section applies only to an already existing proceeding established under the AEA. And, as the Secretary also noted, to invoke the provisions of the NWPA, a person must already be a party to a proceeding established under the AEA. Because there was no AEA proceeding and Ms. Shapiro was not a party, the provisions of the NWPA did not apply.

The NRC will be pleased to respond to any additional questions you may have concerning this matter. Please contact me at 301-415-1776.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Schmidt". The signature is written in a cursive style with a small flourish at the end of the last name.

Rebecca Schmidt, Director  
Office of Congressional Affairs

Enclosure: As stated



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December 28, 2009

Vice President, Operations  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
450 Broadway, GSB  
P.O. Box 249  
Buchanan, NY 10511-0249

SUBJECT: INDIAN POINT NUCLEAR GENERATING UNIT NO. 2 - DECOMMISSIONING  
FUNDING STATUS REPORT (TAC NO. ME0528)

Dear Sir or Madam:

By letter dated March 30, 2009, Agencywide Documents Access and Management System (ADAMS) Accession No. ML090920576, Entergy Nuclear Operations, Inc. (Entergy), submitted the Biennial Decommissioning Funding Report required by Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.75, "Reporting and recordkeeping for decommissioning planning" for the nuclear power plants operated by Entergy. 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. ML092100643 for a summary of that call.

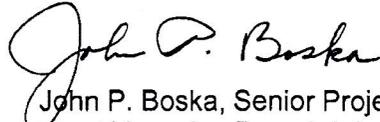
By letter dated August 13, 2009, ADAMS Accession No. ML092260736, Entergy provided additional information on the decommissioning funding. The NRC staff has reviewed the submittal, which outlines Entergy's plan of action to cover shortfalls in providing decommissioning funding assurance and/or decommissioning funding realized in the report for IP2 that was submitted on March 30, 2009.

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.

- 2 -

Please contact me at (301) 415-2901 if you have any questions on this issue.

Sincerely,

A handwritten signature in black ink that reads "John P. Boska". The signature is written in a cursive style with a large initial "J" and a distinct "P" and "B".

John P. Boska, Senior Project Manager  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket No. 50-247

cc w/encl: Distribution via Listserv