



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

September 23, 2010

EA-10-15

Vice President, Operations
Entergy Operations, Inc.
River Bend Station
5485 US Highway 61N
St. Francisville, LA 70775

SUBJECT: RIVER BEND STATION APPARENT VIOLATIONS

Dear Sir or Madam:

This letter refers to issues identified during the Nuclear Regulatory Commission's (NRC's) review of the decommissioning funding report for the River Bend Station, submitted by Entergy Operations, Inc. (Entergy) on March 30, 2009. The purpose of our review was to determine Entergy's compliance with the decommissioning financial assurance requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.75. Based on the results of this review, three apparent violations were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy, which can be found on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

First, 10 CFR 50.75(b) requires, in part, that each holder of a power reactor operating license submit a decommissioning report that contains a certification that financial assurance for decommissioning has been provided in an amount which may be more, but not less, than the amount stated in the table in 10 CFR 50.75(c)(1). Contrary to the above, from December 31, 2008, to the present time, Entergy failed to provide sufficient financial assurance certification for River Bend Station. Specifically, Entergy failed to provide financial assurance for decommissioning in an amount which was more than the amount stated in 10 CFR 50.75(c)(1) by having a shortfall of \$164 million.

Second, 10 CFR 50.75(f)(1) requires each power reactor licensee to periodically report to the NRC on the status of its decommissioning funding for each reactor or share of a reactor that it owns. The information in this report must identify any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(v). Additionally, 10 CFR 50.9(a) requires that information provided to the NRC by a licensee be complete and accurate in all material respects. On March 30, 2009, Entergy submitted a decommissioning funding report for River Bend Station Unit 1, as required by 10 CFR 50.75(f)(1). Contrary to the above, the decommissioning funding report Entergy submitted was not complete and accurate in all material respects in that it failed to report a contract (i.e., a power purchase agreement) with Entergy Texas, Inc., which Entergy has relied upon during the reporting period for financial assurance for the decommissioning of River Bend Station.

Third, 10 CFR 50.75(e)(1) requires, in part, that each power reactor licensee provide decommissioning funding assurance using one of the methods allowed by the NRC. 10 CFR 50.75(e)(1)(v) requires, in part, that if a contract is used for decommissioning funding,

the contract must provide that the electricity buyer will pay the decommissioning obligations specified in the contract, notwithstanding the operational status of the reactor or force majeure provisions, and that all proceeds from the contract for decommissioning funding will be deposited into an external sinking fund. Contrary to this requirement, a contract relied upon to provide decommissioning funding assurance for River Bend Station was not acceptable. Specifically, since January 1, 2008, Entergy used a purchase power agreement (i.e., a contract) that did not provide that the buyer will pay notwithstanding the operational status of the reactor or force majeure provisions and did not provide adequate assurance that all proceeds from the contract for decommissioning funding would be deposited to an external sinking fund.

A summary of the NRC's review and the basis for concluding that these issues represent apparent violations of NRC requirements is provided in the Enclosure to this letter. These apparent violations are being evaluated using the NRC's traditional enforcement process because they impacted the NRC's ability to perform its regulatory function. The circumstances surrounding these apparent violations, the significance of the issues, and the need for prompt and comprehensive corrective actions were discussed with Entergy staff from the Entergy offices in White Plains and the River Bend Station in a telephone call on September 16, 2010. Before the NRC makes its enforcement decision, we are providing you an opportunity to (1) respond to the apparent violations addressed in this letter within 30 days of the date of this letter, or (2) request a Pre-decisional Enforcement Conference (PEC). If a PEC is held; it will be open for public observation and the NRC will issue a press release to announce the time and date of the conference. Since the NRC has not made a final determination in this matter, a Notice of Violation is not being issued at this time. In addition, please be advised that the number and characterization of apparent violations described in this letter may change as a result of further NRC review. Please contact Christopher M. Regan at 301-415-2768 within 10 days of the date of this letter to notify the NRC of your intended response.

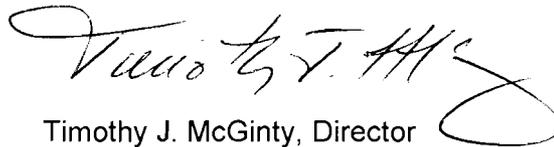
If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violations; EA-10-159" and the response for each apparent violation should include: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. The discussion on corrective actions should specifically address the activities taken or planned to eliminate the existing shortfall and achieve compliance with the decommissioning financial assurance requirements. If the planned corrective actions are dependent on the continued use of the existing purchase power contract, the discussion should also include the actions assuring that the contract meets the necessary standards for providing decommissioning financial assurance. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. Because this issue does not involve security-related information, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if any) will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS), component of ADAMS.

To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Should you have any questions, please contact Anneliese Simmons at 301-415-2791.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. McGinty". The signature is fluid and cursive, with a large loop at the end.

Timothy J. McGinty, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Docket No. 50-458

Enclosure:
As stated

cc w/encl: Distribution via Listserv

**FACTUAL SUMMARY
OF
RIVER BEND STATION
DECOMMISSIONING FUNDING ISSUES
DOCKET NO. 50-458**

Scope

The Nuclear Regulatory Commission (NRC) staff reviewed the Entergy Decommissioning Funding Assurance Report for River Bend against the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Subsections 50.75(f)(1) and 50.75(f)(2) to determine if the licensee had demonstrated with reasonable assurance that sufficient funding for radiological decommissioning of the River Bend reactor will be available at the permanent termination of operation.

Analysis

On March 30, 2009, River Bend Station, Unit 1 submitted a decommissioning fund status report (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090920218) as required by 10 CFR 50.75(f). The report was based on its trust fund balances as of December 31, 2008. An independent analysis of the River Bend decommissioning report was performed in accordance with the Office of Nuclear Reactor Regulation (NRR) Office Instruction LIC-205, "Procedures for NRC's Independent Analysis of Decommissioning Funding Assurance for Operating Nuclear Power Reactors." Based on that analysis, the NRC staff identified a potential shortfall. The shortfall is an apparent violation of 10 CFR 50.75(b) which requires that financial assurance for decommissioning has been provided by the licensee in an amount which may be more, but not less, than the amount stated in the table in 10 CFR 50.75(c)(1), as adjusted by the escalation factors in 10 CFR 50.75(c)(2). The amount reported by the licensee is \$164 million less than the amount required by the table in 10 CFR 50.75. The licensee was notified of the results of the staff's analysis by letter dated June 18, 2009, (ADAMS Accession No. ML091540293), and was asked to provide a plan to address the deficiency.

The March 2009 decommissioning funding report indicated that the licensee did not rely on any contracts for decommissioning funding during the reporting period ending December 31, 2008. However, in discussions with the NRC staff about the shortfall, the licensee indicated that since approximately January 2008, it had received funding for decommissioning through a contract (power purchase agreement) with Entergy Texas, Inc. (ETI), a rate-regulated entity under Texas jurisdiction. The licensee's statements contradicted the information provided in the March 30, 2009, report which stated that there were no contracts upon which the licensee was relying for decommissioning funding. This is an apparent violation of 10 CFR 50.75(f)(1) which requires the licensee to report any contracts upon which it relies for decommissioning funding. By letter dated August 13, 2009, (ADAMS Accession No. ML092260590), the licensee provided its plan to make up the shortfall in decommissioning funding. As part of the plan, the licensee again indicated its reliance on the existing contract by stating its intent to seek reinstatement of

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collections for decommissioning funds which had been suspended in March 2009. On November 12, 2009, the licensee submitted its amended funding plan (ADAMS Accession No. ML093200212) and the ETI contract. The licensee's submittal again identified that reliance on the power purchase contract with ETI for decommissioning funding. The NRC staff identified an apparent violation of 10 CFR 50.9 in that the report submitted to the NRC was not accurate in all material aspects because it failed to identify a contract depended upon for decommissioning financial assurance. The failure to provide accurate information impacted the regulatory process in that the inaccurate information was material to NRC's determination of whether the licensee provided adequate decommissioning funding assurance.

After being informed of the dependence on a contract with ETI, the NRC staff determined that the power purchase agreement between ETI and the licensee, combined with the existing trust fund, may qualify as acceptable under § 50.75(e)(1)(v) or (vi). However, the existing information was not sufficient for the NRC staff to evaluate the acceptability of the proposed method(s). The staff requested additional information from the licensee on October 14, 2009, (ADAMS Accession No. ML092680611), to determine if the contract met the requirements of 10 CFR 50.75(v) for use as decommissioning financial assurance. The licensee provided a copy of the contract for staff review on November 12, 2009, (ADAMS Accession No. ML093200212), and stated the reasons for concluding that the contract complied with the requirements of 10 CFR 50.75(v). The NRC evaluated the terms of the contract offered as assurance for decommissioning funding. As a result of that evaluation, the staff requested additional information by letter dated March 11, 2010, (ADAMS Accession No. ML100700358), on details of the contract specifically related to how it provided that the buyer would pay decommissioning obligations notwithstanding the operational status of the reactor or force majeure provisions and how the proceeds from the contract are held to assure decommissioning funding assurance. The licensee responded by letter dated May 10, 2010, (ADAMS Accession No. ML101520363). The NRC review of the contract and the additional information provided by the licensee determined that the contract did not meet the applicable requirements because it did not provide for payment of decommissioning obligations notwithstanding the operational status of the reactor or force majeure provisions and did not identify how the proceeds of the contract were to be secured for decommissioning assurance. As a result, the staff identified an apparent violation of 10 CFR 50.75(e)(1)(v), which requires that proceeds from contracts used for decommissioning funding will be deposited to the external sinking fund.

Summary

The examination and analysis of the Decommissioning Funding Assurance Report for River Bend Station has resulted in multiple staff inquiries, a public meeting in August 2009, and a Commission briefing in February 2010. However, as of the date of this transmittal, Entergy has not provided adequate financial assurance for River Bend Station.

In completing its analysis of River Bend decommissioning financial assurance, the NRC staff has identified three apparent violations of NRC requirements. For administrative purposes, those violations have been assigned the tracking numbers listed below:

- AV 05000458/2010004-01, Failure to provide adequate decommissioning funding assurance from Dec. 31, 2008 through the present (10 CFR 50.75(b)).
- AV 05000458/2010004-01, Failure to provide complete and accurate information by failing to disclose its reliance on a contract in the March 2009 funds status report (10 CFR 50.75(f)(1) and 10 CFR 50.9).
- AV 05000458/2010004-01, Use of a decommissioning funding mechanism that did not meet the requirements of 10 CFR 50.75(e)(1)(v).

A review of Supplement VII of the Enforcement Policy indicates that the severity level of these violations is potentially greater than Severity Level IV.

To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Should you have any questions, please contact Anneliese Simmons at 301-415-2791.

Sincerely,

/RA/

Timothy J. McGinty, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Docket No. 50-458

Enclosure:
As stated

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