

March 11, 2011

EA-10-159

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

SUBJECT: RIVER BEND STATION APPARENT VIOLATIONS

Dear Sir or Madam:

This letter provides you with the Nuclear Regulatory Commission's (NRC's) final determinations concerning three apparent violations identified during the NRC's review of the decommissioning funding report for the River Bend Station, submitted by Entergy Operations, Inc. (Entergy), on March 30, 2009, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090920218). 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 the review, three apparent violations were identified and issued to Entergy in a letter dated September 23, 2010, (ADAMS Accession No. ML102660077), and were considered for escalated enforcement action in accordance with the NRC Enforcement Policy. At your request, a Pre-decisional Enforcement Conference (PEC) was held on November 19, 2010, to discuss Entergy's views on these issues.

The NRC has reviewed the additional information concerning decommissioning funding provided by Entergy at the PEC and has determined that no additional enforcement action will be taken. Nevertheless, the NRC notes that Entergy's lack of clarity in the March 2009 decommissioning funding report for the River Bend Station led to multiple staff inquiries, including requests for additional information and the issuance of a choice letter identifying three apparent violations before the issues could be resolved. The significant consumption of staff resources caused by Entergy's lack of clarity was avoidable.

Entergy's March 2009 report failed to identify clearly and unambiguously the existence of and the terms of the MS-4 Purchase Power Agreement (PPA) between Entergy Gulf States Louisiana, LLC (EGS-LA) and Entergy Texas, Inc. (ETI). In the PEC, Entergy explained that it did not rely on the PPA at the time the March report was filed. The staff stresses that future reports must provide a full explanation of the existence of any contract upon which Entergy may rely, whether or not the contract is being relied on at a particular moment in time. The PPA should have been attached to the March 2009 submission, with a clear explanation of the circumstances concerning the public utility commissions of Texas and Louisiana.

In addition, Entergy should have referenced or attached the October 2007, "River Bend, Unit 1-Order Approving the Direct Transfer of Facility Operating License No. NPF-47 from Entergy Gulf States, Inc. to Entergy Gulf States Louisiana, LLC (ADAMS Accession No.

ML072420498) in order to (1) advise the NRC that EGS-LA will continue to provide decommissioning funding through an external sinking fund, and (2) indicate that funds for decommissioning will continue to be collected as needed through rates established by the LPSC and payments to EGS-LA from ETI under the PPA, and held in a trust established for decommissioning the plant.

During the PEC, Entergy advised the staff that on August 2, 2010, it had taken corrective action to revise the PPA to include the contract terms in 10 CFR 50.75(e)(1)(v) and that a Federal Energy Regulatory Commission filing was in process to effect the changes. Entergy should submit the revised contract incorporating appropriate language, in accordance with the requirements of 10 CFR 50.75(e)(1)(v), as part of the decommissioning status report due March 31, 2011. NRC expects that contracts terms provided in NRC regulations will be used in contracts defining decommissioning financial assurance obligations, unless an exemption from the regulatory requirement is sought.

Entergy's PPA did not use the contract terms found in 10 CFR 50.75(e)(1)(v). The PPA did not state that payments for decommissioning from ETI will be made, notwithstanding the operational status of the reactor or *force majeure*, as found in the regulations.

- In the PEC, Entergy addressed the staff's concern that the payments were not required notwithstanding the operational status of the River Bend reactor quoting from the PPA: "5. Term. *The term of this Agreement shall be the operating life of the Designated Units, plus any time required to decommission the Designated Units.*" "Responses to Apparent Violations River Bend Decommissioning Funding, November 19, 2010," at 33, distributed by the Licensee at the PEC. This language appears to meet the intent of the text in the regulations, and, in any event, the language will be revised to match the regulatory text in the revised contract.
- In the PEC, Entergy explained the absence of contract terms referring to *force majeure*: (1) there is no clause in the PPA or the implementing tariff, MSS-4, that excuses a party's obligations based on a *force majeure* event, and (2) Texas and Louisiana law provides that unless a contract clause excuses performance for events for *force majeure*, *force majeure* events do not excuse performance. Entergy's statements at the PEC regarding Texas and Louisiana law were confirmed to be accurate. While the NRC finds the licensee in substantial compliance on this issue, Entergy should not have assumed that NRC staff had knowledge of Texas and Louisiana state law.

Licensees are responsible for monitoring and managing their decommissioning trusts to ensure that funds will be available at the time of shutdown to provide for orderly and timely decommissioning to protect public health and the environment. NRC relies on biennial reports to assess the adequacy of decommissioning trust funds and it expects licensees to provide required information in a straightforward format without the need to conduct historical research.

The NRC considers apparent violations AV 05000458/2010004-01, 02 and 03 closed. A separate response to this letter is not required. However, if you choose to submit a response, in accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your

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response will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the NRC's document system ADAMS. ADAMS is accessible from the NRC website at www.nrc.gov/reading-rm/adams.html (the Public Reading Room).

Sincerely,

/RA/

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

Docket No. 50-458

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