



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

June 30, 2011

The Honorable Eric T. Schneiderman
Attorney General, State of New York
Office of the Attorney General
120 Broadway, 26th Floor
New York, NY 10271

Dear Mr. Schneiderman:

The U.S. Nuclear Regulatory Commission (NRC) referred your petition dated March 28, 2011, and addressed to R. William Borchardt, Executive Director for Operations (EDO), to me under Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, "Requests for action under this subpart." You, the petitioner, asked the NRC to take immediate actions by issuing an order that requires the following actions with respect to Indian Point Nuclear Generating Unit Nos. 1, 2, and 3:

- Identify the violations of paragraphs F and G of Section III of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating prior to January 1, 1979," to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," that exist as of the date of the petition (i.e., March 28, 2011) at Indian Point Units 1, 2, and 3.
- Compel Entergy Nuclear Operations, Inc. (Entergy), and its affiliates to comply on or before September 20, 2011, with the requirements in paragraphs F and G for all the fire zones in Indian Point Units 2 and 3 and any Indian Point Unit 1 fire zone or system, structure, or component relied on by Indian Point Units 2 and 3.
- Convene an evidentiary hearing before the Commission to adjudicate the violations by Entergy and its affiliates of paragraphs F and G at Indian Point Units 1, 2, and 3.

As the basis for your request, you stated, in part, the following:

- The petitioner cited the population centers adjacent to the Indian Point facility. The petitioner described past investigations by both the NRC Office of Investigations and the Government Accountability Office on fire barriers, most specifically Thermo-Lag and Hemyc. The petitioner implied that the NRC staff has not been aggressive in resolving fire barrier issues or in taking meaningful enforcement action toward Indian Point.
- The petitioner focused on the exemptions to Appendix R to 10 CFR Part 50 that the licensee submitted in March 2009. The exemptions include operator manual actions in a large number of fire areas at Indian Point. The petitioner stated that the regulations do not authorize operator manual actions as a means for protecting a redundant system from fire. The petitioner referenced the ongoing situation in Japan and questioned whether plant operators would be physically able to perform these duties.

- In conclusion, the petitioner stated that (1) the NRC should reserve exemptions for extraordinary circumstances, (2) the NRC should not approve the exemptions, and (3) Entergy has not made a serious effort to comply with Federal regulations.

On April 5, 2011, the NRC's Petition Review Board (PRB) met internally to discuss your request for immediate action. On April 12, 2011, the PRB informed you of its decision to deny the request for immediate action based on the following:

- The licensee has submitted a request for exemptions to the NRC in accordance with the agency's guidance and enforcement policy (i.e., Regulatory Issue Summary 2006-10, "Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions," dated June 30, 2006, and Enforcement Guidance Memorandum 07-004, "Enforcement Discretion for Post-Fire Manual Actions Used as Compensatory Measures for Fire-Induced Circuit Failures," dated June 30, 2007). Enforcement discretion is currently applicable during the NRC's review of the exemptions, which are being evaluated against the criteria of NUREG-1852, "Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire," issued October 2007.
- The licensee has evaluated the credited operator manual actions against the acceptance criteria in NRC Inspection Procedure 71111.05T, "Fire Protection (Triennial)," and confirmed that operator actions are feasible and reliable during the postfire coping scenario.
- Therefore, the NRC staff concludes that (1) the licensee's actions are within the NRC's defined process, (2) enforcement discretion is applicable, (3) identifiable safety concerns do not exist, and (4) the NRC has no basis for taking immediate action.

Representatives from your office met with the PRB on May 9, 2011, to discuss your petition. The meeting summary dated June 8, 2011, included the transcript of that meeting (Agencywide Documents Access and Management System Accession No. ML111540111). On May 19, 2011, the PRB met internally to discuss your petition. The PRB's final recommendation is to accept your petition for review under 10 CFR 2.206.

In accordance with 10 CFR 2.206, the NRC will take action on your request within a reasonable period of time. I have assigned Mr. Douglas Pickett to be the petition manager for your petition. You can reach Mr. Pickett by telephone at 301-415-1364 or by e-mail at Douglas.Pickett@nrc.gov.

Enclosed for your information is a copy of the notice that is being filed with the Office of the Federal Register for publication. I have also enclosed for your information a copy of Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," dated October 25, 2000, and the associated brochure NUREG/BR-0200, "Public Petition Process," issued February 2003, prepared by the NRC Office of Public Affairs.

E. Schneiderman

- 3 -

I would like to express my appreciation for your effort in bringing these matters to the attention of the NRC.

Sincerely,

A handwritten signature in black ink, appearing to read "E. J. Leeds". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

Enclosures:

1. *Federal Register* Notice
2. Management Directive 8.11
3. NUREG/BR-0200

cc:

Listserv

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Assistant Attorney General
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New York, NY 10271

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U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-003, 50-247, AND 50-286

LICENSE NOS. DPR-5, DPR-26, AND DPR-64

ENERGY NUCLEAR INDIAN POINT 2, LLC

ENERGY NUCLEAR INDIAN POINT 3, LLC

ENERGY NUCLEAR OPERATIONS, INC.

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated March 28, 2011, Eric T. Schneiderman, Attorney General for the State of New York, the petitioner, has asked the U.S. Nuclear Regulatory Commission (NRC) to take enforcement action against Entergy Nuclear Operations, Inc. (Entergy), and its affiliates for violations of the agency's 1980 fire safety regulations at Indian Point Nuclear Generating Unit Nos. 1, 2, and 3. The petitioner asked the NRC to take immediate action by issuing an order that requires the following actions:

- Identify the violations of paragraphs F and G of Section III of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating prior to January 1, 1979," to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," that exist as of the date of the petition (i.e., March 28, 2011) at Indian Point Units 1, 2, and 3.
- Compel Entergy and its affiliates to comply on or before September 20, 2011, with the requirements in paragraphs F and G for all the fire zones in Indian Point Units 2 and 3 and any Indian Point Unit 1 fire zone or system, structure, or component relied on by Indian Point Units 2 and 3.

- Convene an evidentiary hearing before the Commission to adjudicate the violations by Entergy and its affiliates of paragraphs F and G at Indian Point Units 1, 2, and 3.

As the basis for the request, the petitioner stated, in part, the following:

- The petitioner cited the population centers adjacent to the Indian Point facility. The petitioner described past investigations by both the NRC Office of Investigations and the Government Accountability Office on fire barriers, most specifically Thermo-Lag and Hemyc. The petitioner implied that the NRC staff has not been aggressive in resolving fire barrier issues or in taking meaningful enforcement action toward Indian Point.
- The petitioner focused on the exemptions to Appendix R to 10 CFR Part 50 that the licensee submitted in March 2009. The exemptions include operator manual actions in a large number of fire areas at Indian Point. The petitioner stated that the regulations do not authorize operator manual actions as a means for protecting a redundant system from fire. The petitioner referenced the ongoing situation in Japan and questioned whether plant operators would be physically able to perform these duties.
- The petitioner stated that (1) the NRC should reserve exemptions for extraordinary circumstances, (2) the NRC should not approve the exemptions, and (3) Entergy has not made a serious effort to comply with Federal regulations.

The NRC is treating the request under 10 CFR 2.206, "Requests for Action under This Subpart," and has referred the request to the Director of the Office of Nuclear Reactor Regulation (NRR). In accordance with 10 CFR 2.206, the NRC will take appropriate action on this petition within a reasonable period of time. The petitioner met with the NRR Petition Review Board on May 9, 2011, to discuss the petition. The Petition Review Board considered the

results of that discussion in its determination of the petitioner's request for immediate action and in the establishment of the schedule for the review of the petition. A copy of the petition is available for inspection at the NRC's Public Document Room (PDR) located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail at PDR.Resources@nrc.gov.

Dated at Rockville, Maryland, this 30th day of June 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "Eric J. Leeds". The signature is fluid and cursive, with a large initial "E" and "L".

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

I would like to express my appreciation for your effort in bringing these matters to the attention of the NRC.

Sincerely,
/ra/
Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

Enclosures:

1. *Federal Register* Notice
2. Management Directive 8.11
3. NUREG/BR-0200

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ADAMS Accession Nos.

ML111520372 (Package)	ML110890871 (Incoming petition)
ML111520393 (Acknowledgement Letter)	ML111520410 (<i>Federal Register</i> Notice)
ML050900248 (NUREG/BR-0200)	ML041770328 (Management Directive 8.11)

*via e-mail

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