

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50-003, 50-247, 50-286; NRC-2012-0265]

License Nos.: DPR-5, DPR-26, and DPR-64

Entergy Nuclear Operations, Inc.,

Entergy Nuclear Indian Point 2, LLC

Entergy Nuclear Indian Point 3, LLC

Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a petition filed by Eric T. Schneiderman, Attorney General, State of New York. The petition, dated March 28, 2011, was supplemented by a transcript of a public meeting held on May 9, 2011, between representatives of the petitioner and the NRC. The petition concerns the operation of the Indian Point Nuclear Generating Units 1, 2, and 3 (Indian Point), owned by Entergy Nuclear Indian Point 2, LLC (Units 1 and 2) and Entergy Nuclear Indian Point 3, LLC (Unit 3) and operated by Entergy Nuclear Operations, Inc. (Entergy or the licensee).

The petitioner asked the NRC to take immediate action and issue an Order requiring the following actions regarding Indian Point Nuclear Generating Units 1, 2, and 3, that would (1) 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 part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities," which exist as of the date of the petition (March 28, 2011), at Indian Point Units 1, 2, and 3, (2) compel Entergy Nuclear Operations, Inc. (Entergy, or the licensee), and its affiliates

to comply on or before September 20, 2011, with the requirements in paragraphs F and G for all fire zones in Indian Point Units 2 and 3, and any Indian Point Unit 1 fire zone or system, structure, or component that Indian Point Units 2 and 3, rely upon, and 3) convene an evidentiary hearing before the Commission to adjudicate the violation of paragraphs F and G at Indian Point Units 1, 2, and 3, by Entergy and its affiliates.

As the basis for the petition, the petitioner (1) cited the population centers adjacent to the Indian Point facility, (2) described past investigations by both the NRC's Office of Investigations and the Government Accountability Office on fire barriers, most specifically Thermo-Lag and Hemyc, (3) stated his belief that the NRC staff has not been aggressive in resolving fire barrier issues or in taking meaningful enforcement action toward Indian Point, (4) focused on the exemptions to Appendix R to 10 CFR Part 50 that the licensee submitted in March 2009, that rely upon operator manual actions (OMAs) in a large number of fire areas at Indian Point, (5) stated his belief that the regulations do not authorize OMAs as a means for protecting a redundant system from fire, and (6) referenced the accident at the Fukushima Dai-ichi nuclear power plant in Japan resulting from the March 11, 2011, Great Tōhoku Earthquake and questioned whether plant operators would be physically capable of performing these duties. Finally, the petitioner expressed his belief 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 May 9, 2011, the petitioner and the licensee met with the NRC's Petition Review Board. The meeting provided the petitioner and the licensee an opportunity to provide additional information and to clarify issues cited in the petition.

The NRC sent a copy of the proposed Director's Decision to the petitioner and the licensee for comment on July 2, 2012. Comments were received from both the petitioner and the licensee and are addressed in an attachment to the final Director's Decision.

The Director of the Office of Nuclear Reactor Regulation granted the petitioner's request, in part, with respect to identifying violations of fire protection requirements at Indian Point and developing a schedule and date for full compliance with the applicable regulations. The petitioner's request to order full compliance by September 20, 2011, and conduct an evidentiary hearing before the Commission to adjudicate the violations was denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR Section 2.206 (DD-12-03), the complete text of which is available in Agencywide Documents Access and Management System (ADAMS) Accession No. ML12240A077 and is available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 24 day of October 2012.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Eric J. Leeds, Director,
Office of Nuclear Reactor Regulation.