



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

March 26, 2013

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. 3 – ISSUANCE OF DRAFT ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT RESULTING FROM RULING FROM SECOND CIRCUIT U.S. COURT OF APPEALS (TAC NO. MF0840)

Dear Sir or Madam:

By letter dated September 28, 2007, the U.S. Nuclear Regulatory Commission (NRC) granted an exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix R, for the Indian Point Nuclear Generating Unit No. 3. In support of the exemption, by letter dated September 24, 2007, the NRC submitted an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) to the *Federal Register* for publication.

On January 7, 2013, the U.S. Court of Appeals vacated the U.S. District Court decision with respect to Mr. Richard Brodsky's challenge that the NRC did not comply with the National Environmental Policy Act in granting the exemption to Entergy. The U.S. Court of Appeals remanded the case to the U.S. District Court "with instructions for it in turn to remand to the NRC so that the agency may: (1) supplement the administrative record to provide an explanation, with supporting affidavits or findings of fact, as to why affording public input into the exemption request was inappropriate or impracticable; or (2) take such other action as it may deem appropriate to resolve this issue."

Therefore, in response to the ruling described above, pursuant to 10 CFR 51.33, "Draft finding of no significant impact; distribution," the NRC is issuing a draft EA/FONSI for a 30-day public comment period. If necessary, the underlying action (i.e., approval of the exemption) may be modified in light of public comments.

Vice President, Operations

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Please feel free to contact me at 301-415-1364 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Douglas V. Pickett". The signature is written in a cursive style with a large, stylized 'D' and 'P'.

Douglas V. Pickett, Senior Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-286

Enclosure:
Draft EA/FONSI

cc w/encl: Distribution via Listserv

NUCLEAR REGULATORY COMMISSION

Docket No. 50-286; NRC-2013-XXXX]

Entergy Nuclear Operations, Inc.

Indian Point Nuclear Generating Unit No.3

Draft Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Environmental Assessment and Finding of No Significant Impact, opportunity to comment.

DATES: Comments must be filed by **[INSERT DATE: 30 DAYS FROM DATE OF PUBLICATION OF THIS *FEDERAL REGISTER* NOTICE]**.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID <NRC-20YY-XXXX>. You may submit comments by any of the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID <NRC-20YY-XXXX>. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- **Fax comments to:** RADB at 301-492-3446.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Senior Project Manager, Plant Licensing Branch I-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-1364; e-mail: Douglas.Pickett@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID <NRC-20YY-XXXX> when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID <NRC-20YY-XXXX>.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209,

301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for exemption, dated July 24, 2006, is available electronically under ADAMS Accession No. ML062140057. The Environmental Assessment and Finding of No Significant Impact, dated September 24, 2007, is available electronically under ADAMS Accession No. ML072110018. The NRC letter approving the exemption, dated September 28, 2007, is available electronically under ADAMS Accession No. ML072410254.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is reconsidering its issuance of a revision of an existing exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Fire Areas ETN-4 and PAB-2, issued to Entergy Nuclear Operations, Inc. (the licensee), for operation of Indian Point Nuclear Generating Unit No. 3 (Indian Point 3), located in Westchester County, NY.

On July 24, 2006, Indian Point 3 submitted an exemption request from the requirement of 10 CFR 50, Appendix R, III, G.2 for a 1-hour rating fire barrier. On September 28, 2007, the NRC issued the exemption. As required by 10 CFR 51.21, the NRC prepared an Environmental Assessment (EA) and finding of no significant impact (FONSI). The EA on the impacts of the exemption and FONSI were published in the *Federal Register* (FR) on the same day the

exemption was issued (72 FR 55254). The exemption was then implemented at Indian Point Unit 3. A draft EA for public comment was not issued for this licensing action.

In 2007, Mr. Richard Brodsky, then a New York State Assemblyman, and others petitioned the NRC to hold a public hearing before granting the exemption. The NRC denied Mr. Brodsky's petition. In 2008, these petitioners filed suit in the U.S. Court of Appeals for the Second Circuit, challenging NRC's denial of a hearing. The Court of Appeals denied the petition for lack of jurisdiction, but afforded petitioners an opportunity to refile their claims in U.S. District Court. In 2011, the U.S. District Court for the Southern District of New York granted NRC summary judgment on the refiled claims, finding no violation of the Administrative Procedure Act, the Atomic Energy Act, or the National Environmental Policy Act (NEPA) in the denial of a hearing on the exemption. Petitioners then sought review of that decision in the U.S. Court of Appeals for the Second Circuit.

On January 7, 2013, the Second Circuit reversed and vacated the U.S. District Court decision with respect to public participation on the EA and FONSI issued in support of the exemptions. The Circuit Court remanded the case to the District Court "with instructions for it in turn to remand to the NRC so that the agency may: (1) supplement the administrative record to explain why allowing public input into the exemption request was inappropriate or impracticable, or (2) take such other action as it may deem appropriate to resolve this issue." The Court directed that proceedings were to be concluded within 120 days of the Mandate, which was issued on March 1, 2013.

In response to the Mandate of the U.S. Court of Appeals, the NRC is issuing for public comment, pursuant to 10 CFR 51.33, this Draft Environmental Assessment and Finding of No Significant Impact. As necessary, the underlying action (i.e., approval of the exemptions) may be modified in light of public comments.

The NRC notes that, subsequent to its action approving the requested exemptions in 2007 and petitioners' court challenges, the agency amended 10 CFR 51.22, which describes NRC's actions categorically excluded from further environmental review under NEPA. See 75 FR 20248 (April 19, 2010). That 2010 rulemaking expanded the scope of an existing categorical exclusion in 10 C.F.R. § 51.22(c)(9) to include approvals of licensee exemption requests. Thus, under the revised provisions of Section 51.22(c)(9), NRC need not prepare any environmental review for exemptions from the requirements of Parts 50 and 52 "with respect to installation or use of a facility component located within the restricted area, as defined in [10 CFR § 20], or which changes an inspection or surveillance requirement," provided there are no significant hazards considerations, no significant increase in offsite effluents, and no significant occupational dose increase.

Although NRC approval of exemptions that meet the criteria of this section no longer require preparation of an EA/FONSI, NRC retains discretion to prepare an EA and FONSI, including an opportunity for public comment, where special circumstances exist. See 10 C.F.R. §§ 51.22(b), 51.33.

III Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action:

The proposed action would revise the January 7, 1987 safety evaluation (SE) to reflect that the installed Hemyc electrical raceway fire barrier system (ERFBS) configurations provide either a 30-minute fire resistance rating, or in one case a 24-minute fire resistance rating, in lieu of the previously stated 1-hour fire resistance rating. The licensee states that a Hemyc ERFBS fire resistance rating will provide sufficient protection for the affected raceways, with adequate margin, to continue to meet the intent of the original requests for exemption and conclusions

presented in the NRC's January 7, 1987, SE. The licensee concludes that the revised fire resistance rating of the Hemyc ERFBS does not reflect a reduction in overall fire safety, and presents no added challenge to the credited post-fire safe-shutdown capability which remains materially unchanged from the configuration originally described in previous letters and as credited in the January 7, 1987, SE.

The proposed action is in accordance with the licensee's application dated July 24, 2006, as supplemented by letters dated April 30, May 23, and August 16, 2007.

The Need for the Proposed Action:

The proposed revision of existing exemptions from 10 CFR Part 50, Appendix R, is needed in response to NRC Information Notice 2005-07, dated April 1, 2005, ADAMS Accession No. ML050890089. The information notice provided licensees the details of Hemyc ERFBS full-scale fire tests conducted by the NRC's Office of Nuclear Regulatory Research. The test results concluded that the Hemyc ERFBS does not provide the level of protection expected for a 1-hour rated fire barrier, as originally designed. The proposed revision to existing exemptions would revise the fire resistance rating of Hemyc ERFBS configurations.

Environmental Impacts of the Proposed Action:

The NRC has completed its SE of the proposed action and concludes that the configuration of the fire zones under review provide reasonable assurance that a severe fire is not plausible and the existing fire protection features are adequate. Based on the presence of redundant safe-shutdown trains, minimal fire hazards and combustibles, automatic cable tray fire suppression system, manual fire suppression features, fire barrier protection, existing Hemyc configuration, and the installed smoke detection system, the NRC staff finds that the use

of this Hemyc fire barrier in these zones will not significantly increase the consequences from a fire in these fire zones.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources:

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for INDIAN POINT 3, dated February 1975.

Agencies and Persons Consulted:

In accordance with its stated policy, on February 13, 2007, the NRC staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

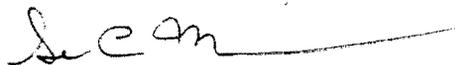
IV. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated July 24, 2006, April 30, 2007, May 23, 2007, and August 16, 2007, (ADAMS Accession Nos. ML062140057, ML071280504, ML071280504, ML072400369).

Dated at Rockville, Maryland, this 26th day of March 2013.

FOR THE NUCLEAR REGULATORY COMMISSION



Sean C. Meighan, Acting Chief
Plant Licensing Branch I-1,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

Vice President, Operations

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Please feel free to contact me at 301-415-1364 if you have any questions.

Sincerely,

/ra/

Douglas V. Pickett, Senior Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-286

Enclosure:
Draft EA/FONSI

cc w/encl: Distribution via Listserv

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