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November 21, 2014

Mark Satorius
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: 10 CFR 2.206 Supplemental Information For Consideration
Entergy Nuclear Operations (Palisades)

Dear Mr. Satorius:

On August 11, 2014 this office filed, on behalf of our clients Chris Mikusko and Roland Ruby, a complaint and request for escalated enforcement action in response to safety culture weaknesses within the Security Department at the Palisades nuclear power plant. Under the process that the Nuclear Regulatory Commission (NRC) follows for such requests, the Agency offered an opportunity to present additional information during a telephone conference scheduled for late October, 2014. Unfortunately, as a result of medical issues, that meeting had to be cancelled, and we were provided the option of supplementing the initial 2.206 complaint in writing. This letter provides supplemental information for the Agency's consideration as it reaches a final decision on whether additional enforcement action is appropriate in order for the NRC to determine that it has reasonable assurance that the public is adequately protected from security-related threats and incidents at Palisades.

Specifically, our August 11th request sought a ruling "… *that the Agency take escalated enforcement action requiring Entergy (the Licensee) either to outsource its security department to a qualified contractor, as existed in the past; or, to appoint an independent third-party monitor to develop, implement, and/or monitor, actions to improve the work environment and safety culture within the Palisades Security Department.*"

These requests are made in the alternative. As to the initial request, requiring Entergy to transfer site security management to an independent contractor, we believe that placing the entire security force under a qualified security contractor would provide the NRC necessary confidence that management of the security force, i.e., maintenance of training requirements, day to day supervision, scheduling, qualifications, firearms qualifications, and all the other aspects of security force management, meet necessary minimum federal, and where appropriate, state requirements.

If the NRC does not decide to require Entergy to transfer security responsibilities to a third-party security contractor, our request is for the NRC to impose a requirement for independent outside third-party oversight on safety-culture recovery activities. Such a contractor would be empowered and required to oversee the Licensee's activities to address SCWE-related weaknesses within the Security Department at Palisades. Such activities would be identifiable, transparent, measurable and designed to address the work environment concerns of the security force at Palisades. This approach has been used successfully by the NRC where, as here, a licensee was unable to take meaningful action that resolved SCWE issues – even given substantial opportunity to do so.

For example, in 2010, after an OI investigation confirmed a deliberate and willful violation of 10 CFR 70.9(a) occurred at Nuclear Fuel Services (NFS), the NRC agreed, in relevant part, as part of a confirmatory agreement, that NFS would conduct an independent third-party review and other assessments, brief the NRC staff and identify appropriate and timely corrective actions, and advise the NRC when it had determined that its improvements in safety culture were "sufficient and sustainable." The NRC required the independent safety culture assessment to continue until the NRC concluded that the actions have been "fully effective." (See, November 16, 2010 *Confirmatory Order,* EA-10-076, at p. 5.)

As an additional example, after an OI investigation conducted at the Chicago Bridge & Iron (CB&I) facility in Lake Charles, Louisiana (formerly known as Shaw Modular Solutions [SMS]) in 2011, the NRC concluded that portions of the SMS workforce, especially those employees with nuclear and quality control backgrounds, perceived that they were not free to raise safety concerns and further believed that individuals had been retaliated against for raising safety concerns. The NRC further found that management had not been effective in assuring employees that they could raise safety concerns without fear of retaliation, and determined that a chilled work environment existed at SMS. Although SMS management hired a consulting firm to conduct a SCWE assessment in February 2012, the results of which identified a chilled work environment, the NRC determined that SMS had taken only minimal actions to remedy the chilled work environment. Because the NRC staff was concerned that SMS did not recognize the extent of the chilled work environment and that its corrective actions had not been effective in remedying the problems, the NRC and CB&I entered a confirmatory agreement whereby CB&I was required, among other things, to establish "a nuclear safety culture oversight program, including one or more committees advised by external consultants with extensive nuclear experience," and hire "a third-party, independent consultant to perform tailored comprehensive nuclear safety culture assessments, including site surveys, … and perform assessments or surveys to ensure effectiveness of the Nuclear Safety Culture and Safety Conscious Work Environment programs...." (See September 6, 2013 *Confirmatory Order,* EA-12-189, at p. 6.)

Additionally, in 1996, after years of the Licensee failing to appreciate the seriousness of the work environment and chilling effect issues plaguing Millstone, as well as ignoring studies and reports by the NRC and its own experts, the NRC issued an Order requiring Millstone to retain a

third-party oversight team to oversee the implementation of a comprehensive safety conscious work environment (SCWE) recovery plan.[1]

> *"..The review found that a concurrent lack of commitment to and accountability in implementing corrective actions had resulted in a continuing failure to proactively resolve emerging issues. It commented that this situation was compounded by the general inability on the part of individual Licensee managers to admit when they are in error. All of these factors have contributed to a strained and effective relationship between management and some employees..."*

(October 24, 1996 *Order Requiring Independent Third-Party Oversight of Northeast Nuclear Energy Company's Implementation of Resolution of the Millstone Stations Employees' Safety Concerns Issues, EA-96-439),* at II.)

Like Millstone, Palisades has had years of indicators of serious safety culture problems. The Security Department's situation has gotten worse, and the management of the Department has continued to falter. Entergy's executive management continues to stand behind its corporate and site leadership team, leaving the NRC no choice but to intervene in order to change the direction of this Department.

[redacted] Incident

Our August 11th letter to the Agency provided a real-time example of the reason that we believe Entergy is incapable of resolving this situation without increased enforcement action. As you know, no Licensee is capable of improving its safety culture without the full support of its Executive Leadership Team. At Entergy the representative of the security workforce on the leadership team is the [redacted] Unfortunately, Entergy's actions in handling this latest incident, reveal a deep-seated failure on the part of Entergy to understand the problems within the Security Department and thus Entergy cannot possibly be trusted to try and figure out how to fix the problem.

[redacted] was responsible for delivering "via presentation in a training setting the results of a recent independent assessment report" and the June 2014, SCWE pulse survey in order "to validate conclusions and obtain additional feedback" and communicate "management's intolerance for retaliation," and to discuss security concerns and issue resolution. (Confirmatory Order, at B.2, p. 6.) This presentation was scheduled for July 29-30, 2014, at the Palisades Plant. Notwithstanding the purpose of the presentation, the actual attitudes and beliefs about SCWE became immediately evident to the Security Officers as a result of vulgar and derogatory comments made by [redacted][2]

As a result of the incident, Entergy retained a Washington, D.C. energy defense law firm to investigate the incident. Unfortunately, based on our understanding, it appears that the

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[1] The Millstone Order required the Licensee to submit for NRC approval, the comprehensive oversight plan to "monitor and oversee the Licensee's efforts to correct and prevent repetition of its past failure in its treatment of employee concerns...."

[2] The details of this incident were included in the August 11th letter.

investigation results, as presented to the Security Department, attempted to justify the statements and behaviors of [redacted], further exacerbating the situation at Palisades and further undermining any trust between Entergy Security Management and the Security Department. In meetings that [redacted], and [redacted], had with the Security Officers regarding this incident and the alleged investigation results, [redacted] and [redacted] denied there was a chilled work environment and stated it was a morale issue; they let it be known that the Security Officers needed to put this situation behind them and "move on". This is yet another missed opportunity for Entergy to have taken responsibility for the work environment within the Security Department.

The handling of the [redacted] incident and its follow-up further supports our lack of confidence that this Licensee is capable of solving this problem without regulatory intervention, competent assistance and guidance, and public oversight.

Request for Regulatory Action

As stated above, we request the NRC initiate escalated enforcement action on the events described herein, and the years of issues within the Security Department. As stated above, our request is in the alternative; first, we request that the NRC:

1) Require Entergy to "outsource" the security function to a competent contractor with demonstrated success in managing security organizations at commercial nuclear power plants.

If the NRC grants this request we would expect that the Licensee would have to present the primary, not commercial, terms of the third-party contract to the NRC for approval for independence and competence, and a substantive comprehensive plan for addressing the safety culture issues within the Department, and the performance measures for success in that area.

Alternatively, we request that the NRC take escalated Enforcement Action to include, but not be limited to:

1) Require the Licensee to retain an independent, third-party consultant with demonstrated success and experience in developing and implementing a plan to address Safety Conscious Work Environment issues with the Security Department, monitoring the improvement of the safety culture within the Security Department, and reporting on this improvement publicly.

    a. This entity should be able to demonstrate financial independence from Entergy;
    b. This entity should have demonstrated experience and success in the area of developing and implementing safety culture improvement plans;
    c. This entity should be required to report its plans and progress in private and public meetings, at least quarterly; and respond to questions by members of the public and workforce regarding Entergy's progress;

d. This entity should utilize a publicly available report format, or "dashboard" that identifies the metrics to be used to measure progress and success/failure of the measures being undertaken to improve the work environment; and maintains this "dashboard" and the current status of the improvement efforts in a manner available to the Palisades work force and the public.
e. This entity should be required to advise the NRC when sufficient progress has been made towards the identified goals to permit removal from this oversight and discontinuing the efforts of the third party review.

2) The Licensee should be required to immediately make significant management changes in connection with the Security management in order to give any recovery plan an opportunity to succeed.

This approach is not novel, and similar requirements have been imposed on Licensees who have failed to provide an appropriate environment for the NRC to have confidence in. Notably, in 1996 the NRC issued an Order requiring similar actions by Northeast Utilities at the Millstone nuclear power plant. (See, October 24, 1996 *Order Requiring Independent Third-Party Oversight of Northeast Nuclear Energy Company's Implementation of Resolution of the Millstone Station Employees' Safety Concerns Issues*, EA-96-439.) In 2010, a similar order was issued to the Nuclear Fuel Services facility in Erwin, Tennessee. (See, November 16, 2010 *Confirmatory Order*, EA-10-076.) Finally, the NRC issued similar requirements to CB&I regarding its fabrication facility through an April 18, 2013 "chilling effect" letter requiring CB&I to establish and maintain an appropriate safety culture at the facility; and establishing specific requirements to ensure that it did so. (See, April 18, 2013, *Letter Regarding Chilled Work Environment at CB&I Lake Charles Fabrication Facility.*)

Like these Licensees, Entergy has demonstrated a similar inability to understand and address its Security Department safety culture issues, even with years of notice and NRC inspections. We believe that without more in-depth regulatory intervention the situation will continue to deteriorate, leaving the workforce distracted and demoralized, and the public safety at risk.

We do not believe that it is appropriate for the NRC to continue to rely on the Security Department officers and managers to bear the burden of pointing out the continued ineptness of the Entergy management team to address the SCWE issues, and the misconduct, lack of integrity and ignorance of the Security Department management staff. This Licensee has had years of opportunities to fix the problem, and has squandered that time. It does not have the in-house talent to solve these issues and is going to have to be required to employ competent SCWE assistance before the situation deteriorates further.

For all the reasons stated herein, the undersigned submits this supplement to the petition for relief filed under 10 CFR 2.206.

Sincerely,

Billie P. Garde

Billie Pirner Garde
Counsel for Chris Mikusko
and Roland Ruby

cc: Mr. Chris Mikusko
Mr. Roland Ruby
(By email)