

April 23, 2007

EA-07-092  
EA-05-190

Mr. Michael R. Kansler  
President  
Entergy Nuclear Operations, Inc.  
440 Hamilton Avenue  
White Plains, NY 10601

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$130,000 AND ADDITIONAL REQUIREMENT TO PROVIDE INFORMATION - (Indian Point Nuclear Generating Station, Units 2 and 3) (Failure to meet NRC Confirmatory Order (EA-05-190) - Emergency Notification System Backup Power)

Dear Mr. Kansler:

On January 31, 2006, the U.S. Nuclear Regulatory Commission (NRC) issued to Entergy Nuclear Operations, Inc. (Entergy) a Confirmatory Order Modifying License (Order) (EA-05-190) to require backup power for the Emergency Notification System (ENS) for Indian Point Nuclear Generating Station Units 2 and 3. The Order incorporated the requirement of Section 651(b) of the Energy Policy Act (Act) of 2005, PL 109-58, 119 Stat 594, which mandates that "for any licensed nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant, not later than 18 months after enactment of the Act, the Commission shall require that backup power to be available for the emergency notification system of the power plant, including the emergency siren warning system, if the alternating current supply within the 10-mile emergency planning zone of the power plant is lost." The Order became effective immediately upon issuance and required full implementation by January 30, 2007. On January 23, 2007, the NRC granted your request, provided in a letter dated January 11, 2007, to extend the full implementation date until April 15, 2007.

In a letter dated April 13, 2007, you informed the NRC of an unexpected preoperational test failure that occurred on April 12, 2007. Specifically, you noted that the "radio only activation" feature did not meet the test acceptance criteria. You also requested NRC approval for additional relaxation of the Order's full implementation date until August 31, 2007. In support of your request, you indicated that it was not feasible for you to complete an evaluation and develop corrective actions for the unexpected preoperational test failure in time to declare the new system operable by April 15, 2007, as required by the relaxed Order. In addition, in your April 13, 2007, letter, you advised that a plan for achieving compliance will be provided by no later than May 14, 2007.

In a letter dated April 13, 2007, the NRC denied your request for relaxation, noting that Entergy had not demonstrated good cause. The NRC letter stated that the NRC staff evaluated the factors presented in your request, as well as your ability to have reasonably foreseen the difficulties which impacted the implementation date of April 15, 2007, and concluded that these factors were known or should have been known by Entergy at the time of its January 11, 2007 request to relax the Order implementation date. Also, the NRC letter recognized that the new siren system cannot be used by Entergy to meet NRC requirements, and because of the inoperability of the new ENS by the date required by the NRC Order, that the NRC would consider action under its Enforcement Policy.

As a result, you have been in violation of the Order since April 16, 2007. The violation is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty. This violation involved the failure to meet the relaxed Order implementation due date as a result of inadequate management oversight after you identified problems in meeting the original due date of January 30, 2007.

The NRC recognizes that the existing ENS is capable of alerting the general public in the vicinity of the Indian Point station if an emergency condition occurs. However, the failure to meet the terms of the Order by the required due date, despite the additional time provided via our extension approval for you to ensure the system would be operable, is of significant regulatory concern to the NRC.

In assessing the significance of the violation, the NRC concluded that Entergy's failure to discharge the terms of the Order significantly undermines the regulatory effectiveness of the NRC in terms of ensuring the timely implementation of section 651(b) of the Energy Policy Act of 2005. For that reason, the NRC is handling this issue under its traditional enforcement process. The NRC considers that your failure to implement the ENS backup power system is of significant regulatory concern given the mandate by Congress. In addition, in the NRC's April 13, 2007, letter, the staff concluded that the factors and difficulties encountered in meeting the April 15, 2007, implementation date were reasonably within Entergy's control. Therefore, in accordance with the Enforcement Policy, the NRC has decided that Severity Level III is the appropriate level to reflect the significance of this particular violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$65,000 is considered for this Severity Level III violation. NRC observations of your implementation activities, including functional testing of the modified equipment, revealed both significant technical weaknesses in the system performance and that implementation by April 15, 2007, would not be achieved. The NRC notes that noncompliance with the Order began on April 16, 2007, and Entergy remains in noncompliance with the Order until such time that the emergency notification system with backup power capability is operable within the context of the Order requirements.

We have determined that Entergy's failure to achieve compliance with the terms of the Order not only within the time initially provided, to which you consented when the Order was issued, but within the additional time you sought, reflects insufficient management attention at senior levels in your organization. Therefore, to emphasize the importance of compliance with Orders issued to your operating license, and in recognition of your previous escalated enforcement actions, I have been authorized, after consultation with the Deputy Executive Director for Reactor and Preparedness Programs, to exercise discretion in escalating the civil penalty and

issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$130,000, which is twice the base amount of \$65,000 for this Severity Level III violation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, the NRC, pursuant to requirements of 10 CFR 50.54 (f), requests that, in addition to the responses called for in the attached Notice of Violation, you also describe specific plans to ensure compliance with the aforementioned Order, including details regarding: (1) siren sound volume test plans to validate the system design report; (2) test plans to demonstrate system functionality and reliability; and, (3) training plans and procedure enhancements to ensure, with a high reliability, that the sirens can be successfully activated from the counties. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. The response required pursuant to 10 CFR 50.54 (f) required herein, is needed by the NRC prior to your declaring the emergency notification system operable, but not later than 30 days of the date of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/>; select **About NRC, Organizations & Functions, Office of Enforcement, About Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

*/RA/*

Samuel J. Collins  
Regional Administrator

Docket Nos. 50-247 and 50-286  
License Nos. DPR-26 and DPR-64

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

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Sincerely,  
/RA/

Samuel J. Collins  
Regional Administrator

Docket Nos. 50-247 and 50-286  
License Nos. DPR-26 and DPR-64

Enclosure: Notice of Violation and Proposed Imposition of Civil Penalty

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**SUNSI Review Complete: RJS (Reviewer's Initials)**

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NAME	KFarrar	DHolody	BBoger*	NMamish*	LChandler*
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\*via email from D Starkey on 04/20/07

cc w/encl:

G. J. Taylor, Chief Executive Officer, Entergy Operations  
M. Kansler, President, Entergy Nuclear Operations, Inc.  
J. T. Herron, Senior Vice President for Operations  
M. Balduzzi, Senior Vice President, Northeastern Regional Operations  
W. Campbell, Senior Vice President of Engineering and Technical Services  
C. Schwarz, Vice President, Operations Support (ENO)  
K. Polson, General Manager Operations  
O. Limpas, Vice President, Engineering (ENO)  
J. McCann, Director, Licensing (ENO)  
C. D. Faison, Manager, Licensing (ENO)  
R. Patch, Director of Oversight (ENO)  
J. Comiotes, Director, Nuclear Safety Assurance  
P. Conroy, Manager, Licensing  
T. C. McCullough, Assistant General Counsel, Entergy Nuclear Operations, Inc.  
P. R. Smith, President, New York State Energy, Research and Development Authority  
P. Eddy, Electric Division, New York State Department of Public Service  
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law  
D. O'Neill, Mayor, Village of Buchanan  
J. G. Testa, Mayor, City of Peekskill  
R. Albanese, Four County Coordinator  
S. Lousteau, Treasury Department, Entergy Services, Inc.  
Chairman, Standing Committee on Energy, NYS Assembly  
Chairman, Standing Committee on Environmental Conservation, NYS Assembly  
Chairman, Committee on Corporations, Authorities, and Commissions  
M. Slobodien, Director, Emergency Planning  
B. Brandenburg, Assistant General Counsel  
Assemblywoman Sandra Galef, NYS Assembly  
County Clerk, Westchester County Legislature  
A. Spano, Westchester County Executive  
R. Bondi, Putnam County Executive  
C. Vanderhoef, Rockland County Executive  
E. A. Diana, Orange County Executive  
T. Judson, Central NY Citizens Awareness Network  
M. Elie, Citizens Awareness Network  
D. Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists  
Public Citizen's Critical Mass Energy Project  
M. Mariotte, Nuclear Information & Resources Service  
F. Zalzman, Pace Law School, Energy Project  
L. Puglisi, Supervisor, Town of Cortlandt  
Congressman John Hall  
Congresswoman Nita Lowey  
Senator Hillary Rodham Clinton  
Senator Charles Schumer  
G. Shapiro, Senator Clinton's Staff  
J. Riccio, Greenpeace  
P. Musegaas, Riverkeeper, Inc.  
M. Kaplowitz, Chairman of County Environment & Health Committee  
A. Reynolds, Environmental Advocates

Mr. Michael Kansler

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M. Jacobs, Director, Longview School

D. Katz, Executive Director, Citizens Awareness Network

K. Coplan, Pace Environmental Litigation Clinic

M. Jacobs, IPSEC

D. C. Poole, PWR SRC Consultant

W. Russell, PWR SRC Consultant

W. Little, Associate Attorney, NYSDEC

R. Christman, Manager Training and Development

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Entergy Nuclear Operations, Inc.  
Indian Point Generating Station, Units 2 and 3

Docket Nos. 05000247; 05000286  
License Nos. DPR-26 and DPR-64  
EA-07-092

On April 16, 2007, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty is set forth below:

The Energy Policy Act (Act) of 2005, requires in part that "For any licensed nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant, not later than 18 months after enactment of the Act, the Commission shall require that backup power to be available for the emergency notification system of the power plant, including the emergency siren warning system, if the alternating current supply within the 10-mile emergency planning zone of the power plant is lost."

NRC Confirmatory Order (Order) (EA-05-190) - Emergency Notification System (ENS) Backup Power for Indian Point Nuclear Generating Units 2 and 3, Sections IV. I and IV. II, as modified pursuant to Section IV. V of the Order by letter from J. Dyer to M. Kansler, dated January 23, 2007, required that the Licensee shall implement II.A, II.B, and II.C.1-3 by April 15, 2007, including requiring the backup power system for the ENS shall be declared operable by April 15, 2007.

Contrary to the above, the Licensee for the Indian Point Generating Station, Units 2 and 3, failed to meet the Order requirements to implement an ENS with backup power capability by April 15, 2007. Specifically, the "radio only activation" feature, the portion of the ENS for which the backup power capability was provided, did not meet its test acceptance criteria, resulting in the ENS not being fully operable by April 15, 2007.

This is a Severity Level III violation.  
Civil Penalty - \$130,000

Pursuant to the provisions of 10 CFR 2.201, Entergy Nuclear Operations, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-07-092)" and should include: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the basis for the denying the validity of the violation; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an Order or an additional Demand for Information requiring you to explain why your license should

not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

Within the same time provided for the response required under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice, the NRC will issue an order imposing the civil penalty.

Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section VI.C.2, "Civil Penalty Assessment," of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to Payment of Civil Penalty, and Answer to a Notice of Violation, should be addressed to: Cynthia Carpenter, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, and a copy to the NRC Resident Inspector(s) at the facility that is the subject of this Notice.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information



required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 23rd day of April 2007.