

July 30, 2007

EA-07-189
EA-07-092
EA-05-190

Mr. Michael A. Balduzzi
Sr. Vice President & COO
Regional Operations, NE
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

SUBJECT: ORDER (EFFECTIVE IMMEDIATELY) MODIFYING LICENSE FOR INDIAN
POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3

Dear Mr. Balduzzi:

The U.S. Nuclear Regulatory Commission (NRC) is issuing the enclosed Order to Entergy Nuclear Operations, Inc., (Entergy) to ensure compliance with the regulations and implementation of the requirements of Section 651(b) of the Energy Policy Act (ACT) of 2005, PL 109-58, 119 Stat 594. This Order supplements the requirements of NRC Confirmatory Order (EA-05-190) which required, in part, a backup power system for the Emergency Notification System (ENS). The Confirmatory Order was issued to the Indian Point Nuclear Generating Unit Nos. 2 and 3 on January 31, 2006, and was amended by the NRC on January 23, 2007, extending the implementation date for the required ENS backup power system to April 15, 2007. The requirements of the January 31, 2006, Confirmatory Order (see Appendix A to the enclosed Order) remain in effect except as specifically modified or supplemented by this Order. The Confirmatory Order did not require installation of a new ENS to meet the requirements of the Act; however, Entergy chose to install a new ENS with the required backup power supply capability, while maintaining the existing ENS system capable of providing public alert notification, if such use was necessary.

On April 23, 2007, the NRC issued to Entergy a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty (EA-07-092) for a violation involving the failure to meet the requirements of the Confirmatory Order that was issued on January 31, 2006. The NRC issued the NOV and Proposed Civil Penalty after you informed the NRC that a feature of the backup power supply, the "radio only activation" feature, of the new ENS did not meet its test acceptance criteria, resulting in the ENS not being fully operable by April 15, 2007. At this time, Entergy continues to be in violation of the January 31, 2006 Confirmatory Order.

On May 23, 2007, you responded to the NOV and described your intended corrective actions, and you also committed to August 24, 2007, as the latest date anticipated for declaring the new ENS system and its associated backup power supply capability operable. The NRC notes that in the context of this Order, operable means that the newly installed ENS meets the design criterion submitted in your Federal Emergency Management Agency (FEMA)-approved Alert Notification System (ANS)¹ design report, is capable of reliable operation during all activation modes (including "radio only" activation), is in compliance with all applicable FEMA requirements, or the requirements of other authorities, necessary to place the system in service by August 24, 2007, and is in use as the primary means for public alerting and notification.

The NRC has evaluated your response to the NOV and the additional information gathered during a July 9, 2007, public meeting with Entergy and has determined that additional actions are needed to ensure that the new ENS with backup power supply capability is operable by August 24, 2007. These actions include: completing the outstanding requirements delineated in the aforementioned Confirmatory Order issued January 31, 2006, as supplemented or modified by this Order; obtaining FEMA acceptance of the new ENS, as the primary ENS for alerting the public, by August 24, 2007; and, completing the necessary software and procedure upgrades and training of county personnel responsible for actuation of the system.

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, that system does not meet the requirements of the Act as imposed by the January 31, 2006, Confirmatory Order because it does not have the backup power supply capability. This Order also contains a provision that the existing ENS shall be maintained available until such time that FEMA grants approval to remove it from service.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violations of this Order will result in additional enforcement action. Also, the requirements of this Order may be modified or relaxed by the Director, Office of Enforcement, where good cause is shown, such as implementation delays that clearly were not under the control of Entergy. In addition, the NRC has been verbally informed by Entergy that some additional time beyond August 24, 2007, may be needed to place the new ENS in service, and that if so, Entergy would supplement its May 23, 2007 response to the NOV. NRC will review Entergy's supplemental response, if submitted, and may modify or relax this Order, if appropriate, as provided in the enclosed Order.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, 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>. To the extent possible, your response, if you choose to provide one, should not include any personal privacy, proprietary, or safeguards

¹ANS and ENS are interchangeable terms in the context of this letter.

M. A. Balduzzi

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information so that it can be made available to the Public without redaction. 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/

Cynthia A. Carpenter, Director
Office of Enforcement

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

Enclosure: Order Modifying License, Appendix A
to Enclosure: Section IV Excerpt from NRC Confirmatory, dated January 31, 2006

cc: w/enclosure (Pages 4-5)

information so that it can be made available to the Public without redaction. 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/
 Cynthia A. Carpenter, Director
 Office of Enforcement

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

Enclosure: Order Modifying License, Appendix A
 to Enclosure: Section IV Excerpt from NRC Confirmatory, dated January 31, 2006

cc: w/enclosure (Pages 4-5)

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DATE	07/30 /07			

OFFICIAL RECORD COPY

cc w/encl:

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M. Kansler, President, Entergy Nuclear Operations, Inc.
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Public Citizen's Critical Mass Energy Project
M. Mariotte, Nuclear Information & Resources Service
F. Zalzman, Pace Law School, Energy Project
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Congressman John Hall
Congresswoman Nita Lowey
Senator Hillary Rodham Clinton
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G. Shapiro, Senator Clinton's Staff
J. Riccio, Greenpeace
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M. Kaplowitz, Chairman of County Environment & Health Committee
A. Reynolds, Environmental Advocates

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D. Katz, Executive Director, Citizens Awareness Network

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket Nos. 50-247 and 50-286
ENTERGY NUCLEAR OPERATIONS, INC.)	
)	License Nos. DPR-26 and DPR-64
(Indian Point Nuclear Generating Unit)	
Nos. 2 and 3))	EA-07-189

ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Entergy Nuclear Operations, Inc. (Licensee) is the holder of Facility Operating License Nos. DPR-26 and DPR-64 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of Indian Point Nuclear Generating Unit Nos. 2 and 3, in accordance with the conditions specified therein. The facilities are located on the Licensee's site in Buchanan, New York.

II

On April 23, 2007, the NRC issued to Entergy Nuclear Operations, Inc. (Entergy) a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty for a violation involving the failure to meet the requirements of a Confirmatory Order (EA-05-190) that was issued to Entergy on January 31, 2006. On January 23, 2007, the NRC granted Entergy's request, provided in a letter dated January 11, 2007, to extend the full implementation date until April 15, 2007. The NRC issued the NOV and Proposed Civil Penalty after Entergy informed the NRC that the "radio only activation" feature of the emergency notification system (ENS) did not meet its test acceptance criteria, resulting in the ENS not being fully operable by April 15, 2007, the date it was required to be operable. Entergy responded to the NOV on May 23, 2007, and committed to declaring the new ENS operable by August 24, 2007. In its response, Entergy

admitted to the violation of the Confirmatory Order, identified the apparent causes of the violation, and described corrective actions that were taken or planned to correct the violation.

Subsequent to the Licensee's May 23, 2007, letter, the NRC held a public meeting with Entergy officials on July 9, 2007, to clarify Entergy's actions to comply with the Confirmatory Order, particularly with respect to ensuring that the new ENS met the applicable Federal Emergency Management Agency (FEMA) regulations, as well as to ensure that any specific county needs were identified and addressed prior to Entergy declaring the new ENS operable.

The NRC has evaluated Entergy's response to the NOV and the additional information gathered during the July 9, 2007, public meeting. The NRC has determined that additional actions are needed to ensure that the new ENS with backup power supply capability is operable by August 24, 2007, as committed to in Entergy's May 23, 2007 letter. These actions include: completing the outstanding requirements delineated in the aforementioned Confirmatory Order issued January 31, 2006, as modified herein; implementing those measures necessary for FEMA to accept the new ENS as the primary ENS for alerting the public by August 24, 2007; and, completing the necessary software and procedure upgrades and training of county personnel responsible for actuation of the system.

III

Adequate backup power for the ENS, as required by the Energy Policy Act of 2005 (Act) (see 42 U.S.C. 2210 et seq.) Section 651(b), requires that: (a) the backup power supply for the Public Alerting System (PAS) must meet commonly-applicable standards, such as National Fire Protection Association (NFPA) Standard 1221, Standard for the Installation, Maintenance, and Use of Emergency Communications Systems (2002) and Underwriters Laboratory (UL) 2017, Section 58.2; (b) each PAS and PAS Alerting Appliance (PASAA) must receive adequate power to perform their intended functions such that backup power is sufficient to allow operation in standby mode for a minimum of 24 hours and in alert mode for a minimum of 15 minutes;

(c) batteries used for backup power must recharge to at least 80 percent of their capacity in a period of not more than 24 hours; (d) except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, immediate automatic indication of a loss of power must be provided to the Licensee and appropriate government agencies; and (e) except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, an automatic notification of an unplanned loss of power must be made to the Licensee in sufficient time to take compensatory action before the backup power supply can not meet the requirements of Section IV, part II. A. 2 of the Confirmatory Order.

The requirements needed to implement the foregoing are set forth in Section IV below. Based on the above, and in consideration of other communications involving the NRC, FEMA, New York State, the four counties within the 10 mile Emergency Planning Zone, and Entergy officials, additional actions are needed to ensure Entergy is in compliance with the Commission's requirements and that the public interest will be protected. Therefore, License Nos. DPR-26 and DPR-64 should be modified to require compliance with Section 651(b) of the Act. Furthermore, pursuant to 10 CFR 2.202, and in consideration of the ongoing violation of the Confirmatory Order, as well as the prior enforcement related to such, I find that the significance of compliance with the Act described above is such that the public interest requires that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended; Section 651(b) of the Energy Policy Act of 2005 (PL 109-58, 119 Stat 594); and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS

HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NOS. DPR-26 AND DPR-64 ARE MODIFIED AS FOLLOWS:

- I. The Licensee shall meet all the provisions contained in the January 31, 2006, Confirmatory Order (see Appendix A of this Order), except as specifically modified or supplemented herein. With respect to the requirement to provide and maintain an ENS with backup power supply capability for the Indian Point Nuclear Generating Unit Nos. 2 and 3 facilities, the new ENS intended to comply with that requirement shall meet applicable requirements of state and federal authorities such that it is declared operable and placed into service as the primary system by August 24, 2007.

- II. The Licensee shall provide to NRC within 7 days of this order a report describing the steps and the expected schedule for completing each of the steps that the licensee understands are necessary to meet applicable requirements of state and federal authorities to place the new ENS system into service as the Primary Notification system. The report should identify any uncertainties in identification of requirements or in schedules associated with requirements.

- III. Prior to declaring the new ENS operable and using it as the primary system, the Licensee shall: (a) obtain FEMA approval that the system, as installed, meets the design criterion of the approved ENS Design Report and is in compliance with all applicable FEMA regulations and guidance; and, (b) complete all necessary software and procedure upgrades and training of all the four county response organizations, accounting for the specific training needs identified by the counties, in the proper use of the new ENS and response to associated alarming conditions.

- IV. The Licensee shall maintain the existing ENS fully available (including conducting routine maintenance and testing activities) and establish the necessary procedures and actions to enable its use as a backup to the new ENS when the new ENS is declared in use as the primary system, until such time that FEMA grants approval to remove the existing ENS from service.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, to the Director, Office of Nuclear Reactor Regulation, and to the Assistant General Counsel for Materials Litigation and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; to the Regional Administrator, NRC Region I, U.S. NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415; and to the Licensee, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, if the answer or

hearing request is by a person other than the Licensee. It is requested that answers and requests for hearing or for time extensions be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101, or by e-mail to hearingdocket@nrc.gov, and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If the hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final

when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 30th day of July 2007

IV

- I. The Licensee shall provide and maintain a backup power supply for the ENS for the Indian Point Nuclear Generating Unit Nos. 2 and 3, facilities. The ENS is the primary prompt notification system used to alert the public of an event at a nuclear power plant.
- II. The Licensee shall implement II.A, II.B, and II.C.1-3 by January 30, 2007. The backup power system for the ENS shall be declared operable by January 30, 2007. The backup power supply for the ENS shall include, as a minimum:
 - A. 1. A backup power supply for the PAS and each PASAA which shall provide adequate power for each component to perform their design function. These functions include the following as examples: sound output, rotation, speech intelligibility, or brightness as applicable. This criterion includes the associated activation, control, monitoring, and testing components for the backup power supply to the ENS including, but not limited to: radio transceivers, testing circuits, sensors to monitor critical operating parameters of the PAS and PASAA.

The Licensee is required to meet all applicable standards, such as NFPA Standard 1221, Standard for the Installation, Maintenance, and Use of Emergency Communications Systems (2002) and UL 2017, Section 58.2;
 2. The backup power supply for each PAS and PASAA shall be designed for operation in standby mode, including, but not limited to: radio transceivers, testing circuits, sensors fully operational and providing polling data to the activation, control, monitoring, and test system for at least 24 hours without AC supply power from the local electric distribution grid. The backup power supply then shall be capable of performing its intended function, without recharge, by operating the PAS and PASAA in its alerting mode at its full design capability for a period of at least 15 minutes. This sequence shall be assumed to occur at the most unfavorable environmental conditions including, but not limited to, temperature, wind, and precipitation specified for PAS and PASAA operation and assume that the batteries are approaching the end of their design life (i.e., the ensuing recharge cycle will bring the batteries back to the minimum state that defines their design life).
 3. In defining battery design life, automatic charging shall be sized such that batteries in the backup power are fully recharged to at least 80 percent of their maximum rated capacity from the fully discharged state in a period of not more than 24 hours.
 4. Battery design life and replacement frequency shall comply with vendor(s) recommendations.

5. Except for those components that are in facilities staffed on a continuous basis (24 hours per day, 7 days per week) or otherwise monitored on a continuous basis, there shall be a feedback system(s) that provides immediate automatic indication of a loss of power to the Licensee and the appropriate government agencies, and an automatic notification of an unplanned loss of power must be made to the Licensee in sufficient time to take compensatory action before the backup power supply can not meet the requirements of Section IV, part II. A. 2.
 6. The Licensee shall implement a preventative maintenance and testing program of the ENS including, but not limited to: the equipment that activates and monitors the system, equipment that provides backup power, and the alerting device to ensure the ENS system performs to its design specifications.
- B.
1. The Licensee shall implement any new Department of Homeland Security (DHS) guidance pertaining to backup power for ENS that may affect the system requirements outlined in this Order that is issued prior to obtaining DHS approval of the alerting system design. The Licensee shall not implement any DHS guidance that reduces the effectiveness of the ENS as provided for in this Order without prior NRC approval.
 2. The Licensee shall document the evaluation of lessons learned from any evaluation of the current alert and notification system (ANS) and address resolution of identified concerns when designing the backup power system and such consideration shall be included in the design report.
 3. The final PAS design must be submitted to DHS for approval prior to May 1, 2006.
- C.
1. Within 60 days of the issuance of this Order, the Licensee shall submit a response to this Order to the NRC Document Control Desk providing a schedule of planned activities associated with the implementation of the Order including interactions with the Putnam, Rockland, Westchester, and Orange Counties, the State of New York, and DHS. In addition, the Licensee shall provide a progress report on or shortly before June 30, 2006.
 2. The Licensee shall submit a proposed revision to its emergency response plan to incorporate the implementation of items A.1–A.6, B.1–B.3, and C.4–C.5. This plan shall be submitted to the NRC for review and approval within 120 days from the issuance of the Order.
 3. Prior to declaring the ENS operable, the Licensee shall, in accordance with a test plan submitted to and approved by the NRC in conjunction with the design submittal, demonstrate satisfactory performance of all (100%) of the ENS components including the ability of the backup power supply to meet its design requirements.
 4. After declaring the ENS operable, the Licensee shall conduct periodic testing to demonstrate reliable ENS system performance.

5. The results from testing as discussed in paragraph C.4 shall be reported, in writing, to the NRC Document Control Desk, with a copy to the Director of Nuclear Reactor Regulation, documenting the results of each test, until there are 3 consecutive tests testing the operability of all ENS components used during an actual activation), conducted no sooner than 25 days and no more than 45 days from the previous test with a 97% overall entire emergency planning zone success rate with no individual county failure rate greater than 10%. A false negative report from a feedback system will constitute a siren failure for the purposes of this test.
-
- III. The Licensee shall submit a written report to the NRC Document Control Desk, with a copy to the Director of Nuclear Reactor Regulation, when the ENS is declared operable.
 - IV. The Licensee shall submit a written report to the NRC Document Control Desk and provide a copy to the Director of Nuclear Reactor Regulation when it has achieved full compliance with the requirements contained in this Order.
 - V. The Licensee may use the criteria contained in 10 CFR 50.54(q) to make changes to the requirements contained in this Order without prior NRC approval provided that they do not reduce the effectiveness of the Order requirements or the approved emergency plan. The Licensee shall notify, in writing, the NRC Document Control Desk, with a copy to the Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response, 30 days in advance of implementing such a change. For other changes, the Licensee may submit a request, in writing, to the NRC Document Control Desk, with a copy to the Director, Office of Nuclear Reactor Regulation, to relax or rescind any of the above requirements upon a showing of good cause by the Licensee.