

November 8, 2007

The Honorable Nita M. Lowey  
United States House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Lowey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated August 24, 2007, regarding the failure of Entergy Nuclear Operations, Inc. (Entergy) to comply fully with the requirements of NRC's July 30, 2007 Order concerning operability of a new Alert and Notification System (ANS) for the Indian Point nuclear power plant. I want to assure you that the NRC is planning additional enforcement action in this matter; however, the Commission does not consider that the situation at Indian Point is an immediate public health and safety concern since the existing ANS system remains operable.

The NRC's July 30<sup>th</sup> Order required that prior to declaring the new ANS operable to serve as the primary system, Entergy needs to receive approval from the Federal Emergency Management Agency (FEMA). FEMA has stated that the new system must meet the design criteria of the FEMA approved ANS Design Report and be in compliance with all applicable FEMA regulations and guidance. In a letter to the NRC dated August 23, 2007, Entergy wrote that it had completed all pre-operability activities required by NRC's Order for the new ANS and had submitted information to FEMA but had not received FEMA's approval.

As you noted in your letter, this is the second violation of an NRC Order related to the ANS. The NRC has determined that Entergy's failure to comply with an NRC Order warrants additional enforcement action and is considering imposing daily civil penalties. Accordingly, on August 30, 2007, the NRC issued a Notice of Violation to Entergy notifying them that the NRC will consider Entergy's due diligence in resolving this matter with FEMA and determine the severity level, any civil penalty, and any required responses from Entergy after Entergy has come into compliance. I have enclosed a copy of the Notice of Violation.

On September 12, 2007, FEMA informed Entergy by letter that the new ANS system was not acceptable. The FEMA letter also implied FEMA had some concerns over the operability of the existing system. NRC staff immediately contacted FEMA to confirm or verify that FEMA considered the existing siren system operable and capable of protecting public health and safety. In a September 24, 2007 letter, FEMA confirmed that the operability of the existing system was not in question and affirmed that the existing system must remain in place until the new system is placed in service.

On October 25, a meeting was held between FEMA and Entergy to discuss the new siren system. The meeting was observed by representatives from the State of New York, local counties, and the NRC. Entergy presented the results of recent siren testing conducted to address FEMA's technical concerns described in its September 12, 2007 letter. At the meeting,

FEMA recommended that a panel be formed, consisting of FEMA, Entergy, NRC, and State and County representatives to resolve the remaining technical issues. The panel is scheduled to meet on November 9, 2007. Entergy will incorporate the panel's resolution into the final design report that is scheduled to be submitted to FEMA in early January 2008.

Entergy has continued to maintain and test the existing ANS, and it remains available and fully capable of alerting the nearby population in the unlikely event of an emergency at the plant. The NRC will continue to monitor Entergy's efforts to gain FEMA approval of the new ANS and will ensure that the existing system remains operable until the new system is placed into service.

If you need additional information, please contact me.

Sincerely,

*/RA/*

Dale E. Klein

Enclosure: Notice of Violation

August 30, 2007

EA-07-212  
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: NOTICE OF VIOLATION

Dear Mr. Balduzzi:

On July 30, 2007, the Nuclear Regulatory Commission (NRC) issued an Order (EA-07-189) to Entergy Nuclear Operations, Inc., (Entergy) to ensure timely compliance with certain aspects of a prior Confirmatory Order issued to Entergy with respect to operation of the Indian Point Nuclear Generation Units. The July 30th Order supplemented the requirements of NRC Confirmatory Order (EA-05-190), which required, in part, a backup power system for the Emergency Notification System (ENS). That 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 to April 15, 2007.

In a letter dated April 13, 2007, you requested NRC approval for additional relaxation of the Confirmatory Order's full implementation date until August 31, 2007. In a letter dated April 13, 2007, the NRC denied your request for a relaxation, noting that Entergy had not demonstrated good cause. As a result, on April 23, 2007, the NRC issued to Entergy a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty (EA-07-092) for the failure to meet the due date. You paid the civil penalty, and in your May 23, 2007, response to the NOV, you committed to August 24, 2007, as the latest anticipated date for declaring the new siren system operable, and thereby restoring compliance with the January 2006, Confirmatory Order.

After careful consideration of your NOV response, the NRC issued the July 30, 2007, Order to supplement the requirements of the January 31, 2006, Confirmatory Order. The July 30, 2007, Order required Entergy to: (1) complete the outstanding requirements in the Confirmatory Order; (2) obtain FEMA acceptance of the new ENS, and place the new system in service as

the primary ENS for alerting the public, by August 24, 2007; (3) complete the necessary software and procedure use upgrades and training of county personnel responsible for actuation of the system; and (4) maintain the existing ENS system fully available until such time as FEMA grants approval to remove the existing ENS from service.

By letter dated August 17, 2007, Entergy informed the NRC that the outstanding requirements of the January 31, 2006, Confirmatory Order and the necessary software and procedure use upgrades and training of county personnel were either completed or would be completed by August 24, 2007. However, Entergy indicated that it was uncertain about the date by which it would obtain FEMA acceptance of the new ENS as the primary system for alerting the public. In addition, during an August 20, 2007, technical meeting, where Entergy provided FEMA the status of outstanding siren issues, FEMA indicated that since Entergy was planning to provide information as late as August 22, 2007 to support this review process, that the FEMA review would take at least 45 days.

By letter dated August 23, 2007, you requested the NRC to consider modifying the terms and conditions of the July 30, 2007, Order to accommodate FEMA's review. Entergy had represented in its May 23, 2007, response to the first Notice of Violation that the August 24, 2007, date included contingency time for uncertainties "related to coordinating these additional activities with external organizations." The August 24, 2007, date already represented a period of 4 months beyond the extended date by which Entergy was to have complied with the original January 31, 2006, order. Under these circumstances, the NRC concludes that Entergy has not demonstrated good cause, therefore, we deny Entergy's request to modify the Order.

As noted in the transmittal letter for the July 30, 2007, Order, Entergy continues to be in non-compliance with the January 31, 2006, Confirmatory Order. As a result of Entergy's apparent failure to take the timely and necessary actions to ensure FEMA's approval for use of the new ENS by August 24, 2007, Entergy did not have approval to place the new ENS system into service by August 24<sup>th</sup> as required by the July 30, 2007, Order. These non-compliances will be subject to escalated enforcement in accordance with the NRC Enforcement Policy. The NRC notes that noncompliance with the July 30<sup>th</sup> Order began on August 25, 2007, and that Entergy remains in noncompliance with the Order until such time that the new ENS is operable within the context of the Order requirements. The violation is described in the enclosed Notice of Violation.

Normally, the NRC would schedule a predecisional enforcement conference to discuss the nature of the violation to determine an appropriate enforcement action. We believe such a conference will better inform the final agency enforcement action on this matter when Entergy is in compliance with the Orders. NRC will closely monitor the FEMA review process as we assess the basis of the violation. NRC will inform you by separate correspondence in the near future whether a predecisional enforcement conference will be held or the results of the NRC deliberation on this matter. However, it should be noted that as a result of the continuing violation, the NRC is considering imposing daily civil penalties. In determining the final enforcement action we will consider your due diligence in resolving this matter with FEMA and

other relevant appropriate considerations. In the interim, since the July 30<sup>th</sup> Order required that Entergy obtain FEMA approval of the new ENS, the NRC believes that Entergy's principal focus should be on supporting the FEMA review of the new ENS.

No response regarding the notice of violation is required at this time.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter 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>.

Thank you for your cooperation.

Sincerely,

/RA/

Cynthia A. Carpenter, Director  
Office of Enforcement

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

Enclosure: Notice of Violation

cc w/Enclosure (Pages 4-5)

cc w/Enclosure:

G. J. Taylor, Chief Executive Officer, Entergy Operations  
M. Kansler, President, Entergy Nuclear Operations, Inc.  
J. T. Herron, Senior Vice President for Operations  
F. Dacimo, Indian Point Site Vice President  
A. Vitale, General Manager Operations  
O. Limpas, Vice President, Engineering (ENO)  
J. McCann, Director, Licensing (ENO)  
C. D. Faison, Manager, Licensing (ENO)  
E. Harkness, Director of Oversight (ENO)  
P. Conroy, Director, Nuclear Safety Assurance  
R. Walpole, Manager, Licensing  
M. Slobodien, Director, Emergency Planning (ENO)  
W. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc.  
M. Balboni, Deputy Secretary for Public Safety, State of New York  
J. Spath, 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  
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  
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. DiProfio, PWR SRC Consultant  
W. Little, Associate Attorney, NYSDEC  
R. Christman, Manager Training and Development  
V. Quinn, FEMA Headquarters  
R. Thomson, FEMA Region II

## NOTICE OF VIOLATION

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

Docket Nos. 05000247; 05000286  
License Nos. DPR-26 and DPR-64  
EA-07-212

On August 25, 2007, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed 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."

In accordance with the Act, on January 31, 2006, the NRC issued a Confirmatory Order (EA-05-190) to the Indian Point Nuclear Generating Unit Nos. 2 and 3, which required, in part, a backup power system for the Emergency Notification System (ENS). The Confirmatory Order was amended by the NRC on January 23, 2007, extending the implementation date to April 15, 2007. On April 23, 2007, the NRC issued to Entergy a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty (EA-07-092) for the failure to meet the due date. Entergy paid the civil penalty, and in their May 23, 2007, response to the NOV, committed to August 24, 2007, as the latest anticipated date for declaring the new siren system operable, and thereby achieving compliance with the January 2006, Confirmatory Order.

On July 30, 2007, the NRC issued an Order (EA-07-189) to supplement the requirements of the January 31, 2006, Confirmatory Order. The July 30, 2007, Order required, in part, that Entergy shall meet the applicable requirements of state and federal authorities such that the new ENS is declared operable and placed into service as the primary ENS by August 24, 2007.

Contrary to the above, the Licensee for the Indian Point Generating Station, Units 2 and 3, failed to meet the Orders' requirements to implement an ENS with backup power capability by August 24, 2007. Specifically, the Licensee failed to obtain necessary approvals so that the new ENS system could be placed in service as the primary notification system by August 24, 2007.

Normally, the NRC would schedule a predecisional enforcement conference to discuss the nature of the violation and to determine an appropriate enforcement sanction. We believe such a conference will better inform the final agency enforcement action on this matter when Entergy is in compliance with the Orders. Additionally, we would normally require a response to this NOV within 30 days with your reply and corrective actions related to this NOV. However, in this



instance the NRC will determine the severity level, any civil penalty, and any required responses from Entergy regarding this matter at a later time. The NRC will inform you by separate correspondence whether a predecisional enforcement conference or formal response from Entergy is required prior to our reaching a final determination on this matter. You will be informed by separate action of whether a civil penalty will be imposed and your rights with regard to responding to or challenging that determination as well as the underlying violation.

Dated this 30<sup>th</sup> day of August 2007.