



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

January 31, 2012

Mr. Jerome M. Hauer
Commissioner, New York State
Division of Homeland Security and
Emergency Services
Building 7A, 7th Floor
1220 Washington Avenue
Albany, NY 12226

Dear Mr. Hauer:

On behalf of the Nuclear Regulatory Commission (NRC), I am responding to your letter¹ dated December 9, 2011, in which you requested that the NRC rescind the Environmental Assessment (EA)² on the fire protection exemptions requested by Entergy Nuclear Operations, Inc. (Entergy) for Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3). In the EA, the NRC staff made a Finding of No Significant Impact (FONSI) for the environmental impact of granting the exemptions or imposing alternatives to the exemptions. You also requested that the NRC engage in a full environmental review of the exemptions requested by Entergy.

As the basis of the request, you stated that the State of New York had filed extensive comments³ expressing concern that Entergy's requests for many of the exemptions would create an undue risk for public health and safety. You also stated that the New York Attorney General had filed a petition⁴ pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206, requesting the NRC to enforce the NRC's fire protection regulations rather than grant exemptions to Entergy, along with other requests. This petition is under review by the NRC, and a final action is not expected for several months. You stated that the FONSI was premature considering the timeline for this petition, and that it prejudices the petition.

In response, I would like to point out that the exemptions requested by Entergy would not result in any physical changes at IP2 or IP3. Entergy is asking for permission to continue operating as it has operated in the past. As the NRC has observed and inspected the plant operations for many years, I am confident in my staff's conclusion that there is no significant impact on the environment from the fire protection exemptions requested for IP2 and IP3. Therefore, I have decided to allow the EA to remain as issued.

In regard to the petition, allow me to start by discussing some historical perspective. The NRC issued enhanced fire protection regulations⁵ in 1979 as a result of lessons learned from a fire at the Browns Ferry Nuclear Plant. Older nuclear plants, such as IP2 and IP3, were not designed to the enhanced standards. In recognition of the fact that certain nuclear plants may develop alternative strategies to address fires, the enhanced regulations included the ability to request

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML113470244.

² 76 FR 74832, December 1, 2011.

³ ADAMS Accession No. ML112010063, dated May 11, 2011.

⁴ ADAMS Accession No. ML110890871, dated March 28, 2011.

⁵ 10 CFR 50.48 and 10 CFR Part 50, Appendix R.

exemptions. A licensee challenged the legality of the enhanced regulations in court as unreasonably stringent and inadequately justified. The D.C. Circuit Court upheld the enhanced regulations, pointing out that the new rule allowed licensees flexibility in compliance by seeking exemptions. The ability for licensees to seek exemptions played a central role in the Court's assessment of the new rule's reasonableness. The Court stated:

If the utility can show that some combination of protective measures provides protection equivalent to that afforded by one of the Commission's three stipulated methods, it will be entitled to an exemption...Whatever the Commission's present expectations, it must remain open to power companies to show in individual exemption applications that [other means] can provide adequate levels of fire protection.⁶

The exemptions the NRC grants in the fire protection area are almost always based on the condition that application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that the ability to achieve and maintain the plant in a safe shutdown condition is preserved following a fire. The licensee must demonstrate to the NRC how it will meet this criteria. The current exemption regulation⁷ also states that the NRC may only grant an exemption if it is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, these exemptions have a strong basis in law and should not be viewed as a way to avoid regulations.

In order to develop an appropriate response to the Attorney General's petition, my staff has determined that the NRC should proceed to disposition Entergy's request for exemptions. This action will bring to a close the period of enforcement discretion that the NRC put in place in 2007 as we sought to work with licensees to resolve the use of operator manual actions which had not been approved by the NRC. Following the disposition of the exemption request, the NRC staff will take appropriate action to address the petition.

I appreciate your concern about the safety of IP2 and IP3, and I assure you that we at the NRC are dedicated to our mission of protecting public health and safety and the environment.

Sincerely,



Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

cc: Listserv

⁶ *Connecticut Light & Power Co. v. NRC*, 673 F.2d at 535-36 (D.C. Cir. 1982).

⁷ 10 CFR 50.12.

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Sincerely,

/ra/

Eric J. Leeds, Director

Office of Nuclear Reactor Regulation

cc: Listserv

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ADAMS ACCESSION NO: ML113480448

*Via email

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⁸ *Connecticut Light & Power Co. v. NRC*, 673 F.2d at 535-36 (D.C. Cir. 1982).

⁹ 10 CFR 50.12.

Letter to J. Hauer from Eric J. Leeds dated January 31, 2012

SUBJECT: INDIAN POINT FIRE PROTECTION EXEMPTIONS

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