

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matters of

All Operating Boiling Water Reactor Licensees
With Mark I and Mark II Containments; Order
Modifying Licenses with Regard to Reliable
Hardened Containment Vents (Effective
Immediately)

Docket No. EA-12-050
ASLBP No. 12-918-01-EA-BD01

All Power Reactor Licensees and Holders of
Construction Permits in Active or Deferred
Status: Order Modifying Licenses with Regard
to Reliable Spent Fuel Pool Instrumentation
(Effective Immediately)

Docket No. EA-12-051
ASLBP No. 12-918-01-EA-BD01

**ENTERGY'S COMMENTS ON NRC STAFF RESPONSE TO THE
BOARD ORDER REGARDING PETITIONS UNDER 10 C.F.R. § 2.206**

Pursuant to the Board's June 19, 2012 Memorandum and Order,¹ Entergy Nuclear Operating Company and Entergy Nuclear Operations, Inc. (collectively "Entergy") hereby submits these comments on the U.S. Nuclear Regulatory Commission ("NRC") Staff's June 15, 2012 submission regarding the instances since January 1975 when substantive relief was granted pursuant to 10 C.F.R. § 2.206.

Entergy has reviewed the Staff's submission and believes that the Staff prepared a detailed, good faith response to the Board's May 9, 2012 Order.² Sections 2.206 of the NRC's regulations allow any person to file a petition requesting that the Commission: (1) modify a license, (2) suspend a license, (3) revoke a license, or (4) take other action as may be appropriate with respect to a licensee. *See* 10 C.F.R. § 2.206. Because § 2.206 petitions are requests for

¹ Licensing Board Memorandum and Order (establishing July 3, 2012 as the deadline for responsive comments) at p. 3 (June 19, 2012) (unpublished).

² Licensing Board Memorandum and Order (Scheduling Oral Argument) (May 9, 2012).

enforcement action against a licensee, instances where the Commission would find the need to modify, suspend, or revoke a license in response to such a petition should be rare. Indeed, if the NRC regularly found the need to take such actions, it would be evidence of a significant breakdown in the Commission's regulatory process.

However, the Commission's remedial power under Section 2.206 is not limited to modifying, suspending, or revoking a license. In addition to those remedies, Section 2.206 contemplates that the Commission may take other action as appropriate in response to a petition. As should be expected, this "other" category is the most commonly granted category of relief. This fact in no way indicates that the Section 2.206 petition process is not meaningful. The Staff's June 15, 2012 submission, in particular the "Summary of Relief" column on the Attachment, confirms that the Commission carefully considers each 2.206 petition and grants a wide variety of relief as appropriate to particular Section 2.206 requests.

The Staff's submission also confirms that the 2.206 process offers the public a meaningful opportunity to raise safety and other concerns to the Commission. As shown in the Staff's submission, the Commission has granted 2.206 petitions in whole or in part on 142 occasions. Although there can be good faith differences of views as to where the line is drawn between procedural and substantive relief, the Staff's submission identifies in its "Summary of Relief" numerous instances that clearly seem to fall on the substantive side of such line. By way of example, the NRC Staff's submission included the following instances of where the Commission granted substantive relief:

- **Fire Protection**: In 2006, the NRC granted a § 2.206 petitioner full relief of its request for issuance of a generic letter to all nuclear power reactor licensees in

order to collect information on the condition of licensees' fire protection systems and their compliance with applicable fire protection regulations.³

- **Possession of Depleted Uranium:** Based on an individual's § 2.206 petition, the NRC conducted an investigation into whether the U.S. Army possessed licensable quantities of depleted uranium at various Army installations without an NRC license.⁴ The NRC granted the petitioner's request in every substantive respect (*i.e.*, for the agency to initiate an investigation and enforcement proceeding).
- **Steam Safety Relief Valves:** In 2011, the NRC granted in part a petitioner's request for the agency to perform an investigation and inspection of a licensee's safety-related systems.⁵ In particular, the agency focused its inspection and investigation on the steam safety relief valves ("SRVs") because the petitioner's concerns associated with the operability of the SRVs (due to leakage issues) met the NRC's criteria for review.
- **Operation Beyond Design Parameters:** In 2000, a § 2.206 petitioner asked the NRC to issue a demand for information to determine whether a licensee was operating beyond its design and licensing bases because the material condition of the piping, tanks, and other components of the liquid and gaseous radwaste

³ DD-06-01, Carolina Power & Light Co., Constellation Energy, Duke Power & Light Co., & Entergy Nuclear Operations, Inc. (Shearon Harris, H.B. Robinson, McGuire, Catawba, Ginna, James A. FitzPatrick, Indian Point, Vermont Yankee, Waterford, Arkansas) (ML053390311), Petitioner, Paul Gunter (Nuclear Information and Resource Service, Citizens Awareness Network, Indian Point Safe Energy Coalition, North Carolina Waste Awareness and Reduction Network, Alliance for Affordable Energy, and Blue Ridge Environmental Defense League) (petition filed May 12, 2005).

⁴ DD-11-05, U.S. Army-Installation Management Command (ML112720286), Petitioner, Isaac Harp (Petition filed Mar. 4, 2010).

⁵ DD-11-06, Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) (ML112240960), Petitioner, Thomas Saporito (petition filed Jan. 14, 2011).

system were not being properly inspected or maintained.⁶ The petitioner asked the NRC to ask questions of the licensee via a demand for information, and based on the licensee's response, to take action against the licensee if the information supplied by the licensee indicated that the facility was operating beyond its design or licensing bases. Within two months of receiving the petition, the NRC granted the petition in its entirety by issuing the demand for information requested by the petitioner. Based upon the licensee's response, the NRC concluded that the licensee was not violating its license.

These few examples drawn from the Staff's comprehensive list show that, where § 2.206 petitioners have raised legitimate safety issues, the NRC has investigated the claims and taken further action when appropriate. These examples, along with the remainder of the petitions identified in the Staff's submission, are also consistent with the text of § 2.206 and the intent of the NRC's predecessor agency when it promulgated the section in 1974. Nothing in § 2.206 requires the NRC to grant the relief requested by each petitioner. Rather, as noted in the statement of considerations adopting the rule, the NRC retains discretion to grant or deny relief, in whole or in part, based on its evaluation of the petitioner's claims.⁷ The fact that the NRC has exercised its discretion to grant substantive relief under numerous § 2.206 petitions demonstrates that this is a meaningful vehicle for public participation.

Although the NRC's Section 2.206 petition process offers petitioners like Pilgrim Watch a meaningful opportunity to seek enforcement action, that fact is simply not relevant when

⁶ DD-00-05, Southern Nuclear Operating Company (Edwin I. Hatch Nuclear Plant Units 1 & 2) (52 NRC 251), Petitioner, David A. Lochbaum/Union of Concerned Scientists (petition filed May 3, 2000).

⁷ Requests to Impose Requirements by Order on a License, or to Modify, Suspend, or Revoke a License, 39 Fed.Reg. 12,353 (Apr. 5, 1974) ("[u]pon the filing of such a request, the Director of Regulation *may* institute the requested proceeding, *or* advise the person who filed the request that no proceeding will be instituted and the reasons therefore.") (emphasis added).

deciding whether to grant the petitioner's hearing request in this case. As explained in Entergy's Answer to Pilgrim Watch's requests for hearing, an intervenor's right to a hearing is defined by Section 189a of the Atomic Energy Act.⁸ Under the controlling Commission precedent interpreting that section, an intervenor must demonstrate some tangible harm resulting from a Commission enforcement action to be entitled to a hearing on that action under Section 189a.⁹ The petitioner here has failed to make the requisite showing in this regard and therefore the petitioner's hearing request must be denied.

WHEREFORE, for the reasons set forth above, Entergy respectfully submits that the NRC Staff's submission demonstrates that the Section 2.206 petition process affords the public a meaningful opportunity to seek NRC enforcement action. Irrespective of this fact, Pilgrim Watch's request for a hearing in this proceeding must be denied under the controlling Commission precedent.

⁸ See Entergy's Answer to Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Order Number EA-12-050), at 5 (Apr. 27, 2012) (ML12118A570); Entergy's Answer to Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent Reliable Spent Fuel Pool Instrumentation (Order Number EA-12-051), at 5 (Apr. 27, 2012) (ML12118A567).

⁹ See Entergy's Answer to Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Order Number EA-12-050), at 9-16 (Apr. 27, 2012) (ML12118A570); Entergy's Answer to Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent Reliable Spent Fuel Pool Instrumentation (Order Number EA-12-051), at 10-16 (Apr. 27, 2012) (ML12118A567).

Respectfully submitted,

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Dated in Washington, D.C. this
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CERTIFICATE OF SERVICE

I hereby certify that copies of “Entergy’s Comments on NRC Staff Response to the Board Order Regarding Petitions Under 10 C.F.R. § 2.206” dated July 3, 2012, have been served upon the following persons by Electronic Information Exchange (EIE) on this 3rd day of July 2012.

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