

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 10/29/07

ATOMIC SAFETY AND LICENSING BOARD

SERVED 10/29/07

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating
Units 2 and 3)

Docket Nos. 50-0247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

October 29, 2007

MEMORANDUM AND ORDER

(Administrative Matters and Directing Parties
Attention to Requirements for Proper Service)

As per the Commission's Order of September 25, 2007 (72 Fed. Reg. 55,834 (Oct. 1, 2007)), Requests for Hearing or Petitions for Leave to Intervene in the above captioned matter must be filed no later than November 30, 2007. Answers to all Requests for Hearing or Petitions for Leave to Intervene that are properly filed and properly served on or before November 30, 2007, must be properly filed and properly served on or before January 11, 2008. Any Reply to the Answers must be properly filed and properly served on or before January 18, 2008.

If Requests for Hearing or Petitions for Leave to Intervene are not properly filed and properly served on or before November 30, 2007, a Motion to Dismiss the Petition, rather than, or in addition to, an Answer would be an appropriate pleading.

With regard to proper filing and service, we note that “[a]ll documents offered for filing must be accompanied by proof of service . . . [and that f]or purposes of service of documents, the staff of the Commission is considered a party.” 10 C.F.R. § 2.302(b). We also note that the Commission’s regulations provide that “[i]f a request for hearing or petition to intervene is filed in

response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.” 10 C.F.R. § 2.309(a). Further, we note that “[w]hen a party has appeared by attorney, service must be made upon the attorney of record.” 10 C.F.R. § 2.305(b).

To date, Petitions to Intervene have been received from three organizations, none of which has been accompanied by an adequate Certificate of Service.

For example, Friends United for Sustainable Energy has presented two similar, but not identical Petitions. Neither version of the Petition indicates that it is offered as an amended petition which supercedes the original petition. Both versions are dated September 21, 2007, and both are accompanied by an unsigned Certificate of Service dated September 19, 2007. Neither Certificate indicates that service was made on the applicant/licensee. As other examples, the Certificate of Service submitted by the New York City Economic Development Corporation does not indicate how, or to whom, its Petition was served, and the New York Affordable Reliable Electricity Alliance did not provide any Certificate of Service.

The litigation in this matter may well attract numerous parties and the pleadings may well be lengthy. Parties should not – will not – be left to assume which is the operative pleading. Accordingly, any amended pleading must be clearly labeled as such and clearly dated so as to be readily distinguishable from earlier, superceded pleadings. Likewise, the Board and the parties must not be left uncertain as to whom, and when, pleadings have been provided. Accordingly, service must be properly made and Certificates of Service must be accurate and complete, including the identity of the person served, the address to which it was sent, the method of service, and the signature (in writing or electronic) of the person who has certified that service has been made exactly as specified in the Certificate of Service.

We urge all persons or organizations who wish to participate in this matter to read the Commission’s Rules of Practice, 10 C.F.R. Part 2. Those Rules outline procedures that allow

hearings to proceed in a fair and orderly manner. Failure by any party to comply with the Rules works an injustice on the other parties to the proceeding. Accordingly, failure to comply with the Rules can well result in a litigant being dismissed from this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹
/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 29, 2007

¹ Copies of this Memorandum and Order were sent this date by Internet e-mail to: (1) Counsel for Entergy; (2) Counsel for Friends United for Sustainable Energy; (3) New York Affordable Reliable Electricity Alliance; (4) Counsel for the New York City Economic Development Corporation; and (5) Counsel for the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
)
(Indian Point Nuclear Generating,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (ADMINISTRATIVE MATTERS AND DIRECTING PARTIES ATTENTION TO REQUIREMENTS FOR PROPER SERVICE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-247/286-LR
LB MEMORANDUM AND ORDER (ADMINISTRATIVE MATTERS
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 29th day of October 2007