

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 11/27/07

ATOMIC SAFETY AND LICENSING BOARD

SERVED 11/27/07

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

November 27, 2007

ORDER

(Denying an Extension of Time Within Which To File Requests For Hearing)

In a letter dated November 21, 2007, which was signed by Susan Shapiro, Esq. on behalf of Westchester Citizen's Awareness Network (WestCan), Citizen's Awareness Network (CAN), Rockland County Conservation Association (RCCA), and Public Health and Sustainable Energy (PHASE), four public interest groups requested an extension of time within which to file Requests for Hearing and Petitions to Intervene.¹ In another letter dated November 21, 2007, which was also signed by Susan Shapiro, Esq. on behalf of the Sierra Club – Atlantic Chapter, that public interest group also requested an extension of time within which to file Requests for Hearing and Petitions to Intervene.²

A similar request for an extension of time had been submitted to the Nuclear Regulatory Commission (NRC or the Commission) by Friends United for Sustainable Energy (FUSE) on November 7, 2007. FUSE's request for an extension of time was granted in part by the

¹ Extension Request of WestCan, CAN, RCCA, and PHASE (Nov. 21, 2007).

² Extension Request of the Sierra Club - Atlantic Chapter (Nov. 21, 2007).

Commission on November 16, 2007³ and FUSE was given an additional 10 days, until December 10, 2007, within which to file Requests for Hearing and Petitions to Intervene.⁴ In addition, the Commission directed that any further requests for extensions of time should be submitted to this Board.⁵

Accordingly, these two requests were properly directed to this Board. However, neither of these requests were accompanied by a Proof of Service, and this Board has repeatedly advised participants in this proceeding that, pursuant to NRC regulations,⁶ all pleadings must be accompanied by a Proof of Service.⁷ This point was also repeatedly made by the Commission in this proceeding.⁸

We reiterate here what was clearly stated in our Order of October 29, 2007: at this point in this proceeding the NRC Staff is a party to this proceeding, 10 C.F.R. § 2.302(b), and the licensee, Entergy, is also a party to this proceeding. 10 C.F.R. § 2.309(a). We also again note that when a party has appeared by attorney, service must be made upon the attorney of record.

³ Commission Order (Granting an Extension of Time) (Nov. 16, 2007).

⁴ Id. at 1.

⁵ E-mail from Emile I. Julian, Assistant for Rulemakings and Adjudications, Office of the Secretary, NRC, to Susan Shapiro, Esq. (Nov. 20, 2007).

⁶ 10 C.F.R. § 2.302(b).

⁷ See Licensing Board Memorandum and Order (Administrative Matters and Directing Parties Attention to Requirements for Proper Service) (Oct. 29, 2007) (unpublished) and Licensing Board Memorandum and Order (Authorizing FUSE to Submit a Section 2.335 Petition) (Nov. 21, 2007) (unpublished).

⁸ Commission Referral (FUSE Request to Include Category 1 Issues in the Indian Point 2 and 3 License Renewal) (Nov. 13, 2007) and Commission Order (Granting an Extension of Time) at 2 (Nov. 16, 2007).

10 C.F.R. § 2.305(b). Accordingly, any pleading in this proceeding which is not accompanied by a Proof of Service on the attorneys for the NRC Staff and Entergy is subject to being struck from the record.

The Board does not comprehend how such a simple and universal requirement in litigation as the preparation of a Certificate of Service can be repeatedly ignored. Regardless of the reason for this dereliction, however, litigation cannot proceed in a fair and orderly manner unless the participants inform themselves of the applicable rules and then follow those rules. To allow a participant to ignore the rules without consequences would work a fundamental unfairness upon the other participants in this proceeding.⁹

As we stated in an earlier Order in this proceeding:

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.¹⁰

These two Requests for Extension of Time within which to file Requests for Hearing and Petitions to Intervene that are now before this Board do not comply with 10 C.F.R. §§ 2.302(b) and 2.323(b). We therefore strike these requests from the record and deny the extension of

⁹ We also note that, in filing these Motions for an Extension of Time, counsel for the moving parties also ignored 10 C.F.R. § 2.323(b), which requires that a “motion must be rejected if it does not include a certification by the attorney . . . of the moving party that the movant has made a sincere effort to contact other parties to the proceeding and resolve the issue(s) raised in the motion.” We again urge representatives who wish to participate in this proceeding to read the regulations and the orders of the Commission and this Board. The level of disregard for the Commission’s rules of practice displayed by counsel in this proceeding to date is bewildering. If counsel intends to participate in this litigation, the rules of practice must be read and followed.

¹⁰ Board Order at 2 (Oct. 29, 2007).

time, without prejudice to filing a new motion which complies with 10 C.F.R. §§ 2.302 and 2.323 as well as all other applicable regulations.¹¹

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹²

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
November 27, 2007

¹¹ If an additional Motion for an Extension is to be filed by these Parties, it must comply with the Part 2 Rules or the Motion will again be rejected.

¹² Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for WestCan, CAN, RCCA, and PHASE; (2) Counsel for the Sierra Club - Atlantic Chapter; (3) Sherwood Martinelli, the representative for FUSE; (4) Counsel for Entergy; (5) New York Affordable Reliable Electricity Alliance; (6) Counsel for the New York City Economic Development Corporation; (7) Manna Jo Green, the representative for Clearwater and (8) 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 ORDER (DENYING AN EXTENSION OF TIME WITHIN WHICH TO FILE REQUESTS FOR HEARING) 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 ORDER (DENYING AN EXTENSION OF TIME WITHIN WHICH
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 27th day of November 2007