

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/03/07

ATOMIC SAFETY AND LICENSING BOARD

SERVED 12/03/07

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. 50-247-LR and 50-286-LR

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

December 3, 2007

ORDER

(Censure of Sherwood Martinelli)

On November 30, 2007, the Board received via electronic mail a copy of a letter that was sent by Mr. Sherwood Martinelli, the representative of Friends United for Sustainable Energy (FUSE), to Sherwin E. Turk, Esq., counsel for the NRC Staff. The Board was one of several entities to whom this communication was copied by Mr. Martinelli.

Initially we note that each member of the Board received this same e-mail four times from Mr. Martinelli. We further note that the day before Mr. Martinelli sent this communication the Board admonished all participants in this litigation not to send duplicate copies of documents because such practice wasted the time of the other participants who must review the multiple copies of documents to determine what, if any, differences exist between them, in order to draft an appropriate responses. We expressly stated that such a practice not only "wastes the time of all participants [but also] may well result in incomplete or incorrect responses by the parties, and incorrect rulings by the Board."¹ Accordingly, this discourteous and wasteful

¹ Licensing Board Order (Granting An Extension Of Time Within Which To File Requests For Hearing) at 5 (Nov. 29, 2007).

practice will not be allowed to continue. We again admonish all participants to read and comply with the Orders of the Board, as they will be held to strict compliance with those Orders.

Next we address the content of Mr. Martinelli's letter to Mr. Turk. In commenting on an earlier Order issued by this Board in this proceeding Mr. Martinelli stated:

“. . . the board decided to be a bunch of pro industry pricks . . .”²

Such language addressed to the presiding judges during the course of an adjudicative proceeding is grossly inappropriate. “[P]arties and their representatives in proceedings subject to [Subpart 2] are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.”³ It would, in our judgement, be impossible for the Board to meet its responsibility “to control the prehearing and hearing process . . . maintain order” and “conduct a fair and impartial hearing in according to the law”⁴ without holding all participants to the level of courtesy and decorum required by the Commission's Regulations. Accordingly, we cannot allow Mr. Martinelli's inappropriate conduct to pass without comment and consequence.

Therefore, we direct Mr. Martinelli to submit on or before December 10, 2007, a written apology for his use of inappropriate and disrespectful language. This apology shall be directed to the Board and to all other participants to this proceeding.⁵ As part of this apology, Mr. Martinelli shall: 1) certify that he will refrain from rude or disrespectful language in all written and oral statements that he will hereafter submit or otherwise make in the course of this proceeding; 2) certify that he has read 10 C.F.R. Part 2 and the previous Orders of the Board in this

² Sherwood Martinelli letter to Sherwin Turk at 1 (Nov. 30, 2007).

³ 10 C.F.R. § 2.314(a).

⁴ 10 C.F.R. § 2.319.

⁵ This includes all persons of organizations to whom Mr. Martinelli sent copies of his letter to Mr. Turk.

proceeding⁶ and; 3) certify that he will comply with those Regulations and the Board's Orders throughout his remaining participation in this proceeding.

Until each of these three directions have been complied with to the satisfaction of the Board, no other pleadings will be accepted in this proceeding from Mr. Martinelli, nor will he be allowed any other participation in this proceeding.

Pursuant to 10 C.F.R. § 2.314(c)(3), an appeal of this Order may be filed with the Commission within ten (10) days after issuance, that is on or before December 13, 2007.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
December 3, 2007

⁶ These Orders include: Licensing Board Order (Administrative Matters and Directing Parties Attention to Requirements for Proper Service) (Oct. 29, 2007); Licensing Board Order (Authorizing FUSE to Submit a Section 2.335 Petition) (Nov. 21, 2007); Licensing Board Order (Denying an Extension of Time Within Which To File Requests For Hearing) (Nov. 27, 2007); Licensing Board Order (Granting an Extension of Time To Clearwater Within Which To File Requests For Hearing) (Nov. 27, 2007); Licensing Board Order (Denying Entergy's Motion to Strike But Sua Sponte Striking FUSE's Multiple Requests For Hearing) (Nov. 28, 2007); Licensing Board Order (Denying an Extension of Time Within Which To File Requests For Hearing) (Nov. 28, 2007); Licensing Board Order (Granting An Extension Of Time Within Which To File Requests For Hearing) (Nov. 29, 2007).

⁷ Copies of this Order were sent this date by Internet e-mail to: (1) Sherwood Martinelli, the representative for FUSE; (2) Counsel for Entergy; (3) Counsel for the NRC Staff; (4) Counsel for WestCan, CAN, RCCA, PHASE, and the Sierra Club - Atlantic Chapter; (5) New York Affordable Reliable Electricity Alliance; (6) Counsel for the New York City Economic Development Corporation; (7) Manna Jo Greene, the representative for Clearwater; and (8) Counsel for Westchester County.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CENSURE OF SHERWOOD MARTINELLI) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Administrative Judge
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Docket Nos. 50-247/286-LR
LB ORDER (CENSURE OF SHERWOOD MARTINELLI)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 3rd day of December 2007