

December 4, 2007 (12:50am)

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

Before Administrative Judges:
Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 50-247/286-LR

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

**Sherwood Martinelli
Appeal of Board Order to Censure**

Dear NRC Secretary and Commission:

I herein am officially appealing a decision of the Atomic Safety and Licensing Board that was dated and handed down on December 3rd, 2007. Said sanction would egregiously deny stakeholder Sherwood Martinelli, and FUSE USA my/their right to participate in the License Renewal Process unless:

- 1. I issue an apology to the board, and all parties for what the board feels was distaste presentation and arrangement of certain words.**
- 2. I read 10 CFR Part**
- 3. I certify that I will abide by the rules of 10 CFR Part 2, and the Boards Orders for the duration of the proceeding, and avoid using any language or combination of words that they as a board subjectively take offense too.**

To protect standing in the process, UNDER DURESS (emphasis added) Sherwood Martinelli has obliged the board, and met the requirements of their egregious order dated December 3rd, 2007. However; as a matter of principle, and to protect my first amendment rights, I am officially appealing said order as A) it attempts to abridge my first amendment rights, including a right to redress as a stakeholder living within three miles of Indian Point, B) is intended to be both retaliatory and controlling in both breath and scope, and C) even if allowed to stand, the threat contained in the order of removing all filings from the record (as they have once already

egregiously done) and denying me the right to exercise my rights as a stakeholder goes far beyond any appropriate sanctions, and was/is intended to force me to be meek and contrite in my presentations to the board, rather than allowing me to HONESTLY and FRANKLY express my own self believed truths, and adequately express my facts as I see them, and D) said order was deliberately written to embarrass me publicly, and force me to submit to the board an apology which I do not feel they are deserving of.

I recieved today's censure order, where the board has taken exception to my speaking my honest heart felt opinion and beliefs in stating, ". . . the board decided to be a bunch of pro industry pricks . . ." as relates to a previous decision by the board, wherein certain FUSE USA filings were tossed not because of a lack of merit, but on technicalities as relates to the rules. It struck me as more than odd, that the board basically gave Entergy everything they were asking for in their Motion to Strike. Further, as required by the rules, I DID NOT PARTICIPATE IN EXPARTE COMMUNICATIONS, but instead addressed my concerns with the boards decision in accordance with the rules and regulations.

In hindsight, I could have, and perhaps should have found a more diplomatic means by which to express and state my discontent and anger with, what I feel was and is a bias, pro-nuclear industry decision by said board. However, did not then, and do not feel now that my choice of words was incorrect, and in fact and deed said words that the board took exception to accurately reflected my views and perceptions of the facts as they exist. Further, the word pricks is no per say a swear word, and I can point, if the Commission so desires, to various uses of the word in published works by renown authors, keeping in mind though, that renown, much like the use of the phrase pricks is subjective by nature.

I expressed my own perceived truths, just as the board expressed their truths in stating that Susan Shapiro as a licensed attorney should have known the basics of the rules, and I do not feel I should be forced to apologize under duress and threat of expulsion from the process for using language that the Board and anyone else subjectively took exception to in my written response to this board. My intent then and now was to express my HONEST OPINIONS before this board, not to offend other's sensibilities in that process. Perhaps if I had known certain board members were so puritan, had such thin skin, I might have chosen a different noun, or set of adjectives in making my point.

So as to clarify my position, I restate, I do not feel I should have to apologize to the board for using what they deem to have been "inappropriate and disrespectful language." I have spent time reading some of the rather colorful exchanges in the emails of certain NRC staff that I

personally found offensive, but did not demand that the NRC fire said employees. Perhaps I have a different view point on what is or is not appropriate language to use in civil discourse than they. After all, when you have the Vice President dropping the F bomb on the floor of the Senate while not being censored, and can turn on any soap opera or Comedy Central and hear far more colorful language, let alone listening to rap lyrics, the lines of propriety over the years seem to have blurred and even changed. What an old duffer finds offensive is actually a part of every day speech. Language used by people in one walk of life could be, and in some cases is considered rude and inappropriate by someone from another walk of life. Neither party is inherently right or wrong, but instead have differing views.

Further, not being a far Right, Born Again Christian member of the Republican Party, being one who embraces Freedom of Speech, and a Woman's Right to Choice, I tend to be more liberal, accepting and tolerant in viewing what others say and write, am perhaps less easily offended by others arrangement of words upon a written page. If Entergy were to call me a prick, I would more than likely agree with their assumption, perhaps even proudly agree with their assessment of me in this particular arena.

Maybe the board should help me in my effort of not stepping over the lines of their subjective version of propriety again in using words or phrases this board considers inappropriate or disrespectful language? Perhaps the board could put forth for me, a list of words or passages they will not allow in documents presented for their consideration? For instance, from my own perspective and views, stating that the NRC stands for No Regulatory Control is not an inappropriate remark, and I have even heard similar remarks by elected officials. I would hate to inadvertently find myself again being censured, singled out for scolding despite my best efforts at exhibiting restraint and decorum in my presentations to this board. More importantly though, this board is attempting to set a **VERY DANGEROUS PRECEDENT...denying a stakeholder their right to involvement in the process, denying their contentions on the basis that they do not like the way in which said person COMMUNICATES.** It's a form of intellectual prejudice that cannot be allowed to stand. First, they dismiss a stakeholders because of the way they speak...what is next, their financial standing in the community, their weight, their color, their sexual orientation, their political beliefs?

A forced apology to the board, attempting to limit my freedom of speech, is no real apology at all. It's an action demanded with an attached threat of the use of force. Further, it is petty, and shows a lack of self esteem on the part of this board if they are so easily offended by mere words. They think

they can demand respect, but they cannot, nor should they be allowed to do so.

Additionally, I feel they show a certain lack of intellect in reacting so viciously to my characterization of their order. If you take the time to examine the word in the dictionary, it did then, and does not accurately (from my perspective) define and frame their action.

Main Entry:

¹prick 1)

Pronunciation:

\ˈprɪk

Function:

noun

Etymology:

*Middle English prikke, from Old English prica; akin to Middle Dutch pric
prick*

Date:

before 12th century

1: a mark or shallow hole made by a pointed instrument 2 a: a pointed instrument or weapon b: a sharp projecting organ or part 3: an instance of pricking or the sensation of being pricked: as a: a nagging or sharp feeling of remorse, regret, or sorrow b: a slight sharply localized discomfort <the prick of a needle> 4 usually vulgar : PENIS 5 usually vulgar : a spiteful or contemptible man often having some authority.

I specifically refer the commission to definition number 5, usually (BUT NOT ALWAYS) vulgar: a spiteful or contemptible man often having some authority. Now, from my perspective, based on what I feel was and is a spiteful ruling, the use of the word when I submitted my response to the board seemed accurate, and continues to appear so. From my own subjective perspective, it seems like an appropriate use of the word within the context it was used. I freely admit that I gave no thought to the fact that certain thin skinned or puritan people might take offense of its use in a sentence, in a document submitted to this board. The fact that they disagree with my verbiage does not change the subjective accuracy of the

sentence, and there are many who would agree with the sentiments as expressed in it.

I therefore appeal the boards decision to the full Commission, and respectfully request that said order for sanctions be reversed and set aside.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Sherwood Martinelli', followed by a long horizontal line extending to the right.

Sherwood Martinelli
FUSE USA
351 Dyckman Street
Peekskill, New York 10566
www.fuseusa.org
(914) 293-7458

Certificate of Service

A copy of the above letter of apology was sent via email to all parties. Further, said letter is being mailed out via normal first class mail to all parties.

Sherwood Martinelli
December 3rd, 2007
FUSE USA
351 Dyckman Street
Peekskill, New York 10566
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From: <RoycePenstinger@aol.com>
To: <Palisadesart@aol.com>, <RoycePenstinger@aol.com>, <kremer@area-alliance.org>, <Mannajo@clearwater.org>, <ksutton@morganlewis.com>, <martin.o'neill@morganlewis.com>, <pbessette@morganlewis.com>, <BNM1@nrc.gov>, <LBS3@nrc.gov>, <SET@nrc.gov>, <mdelaney@nycedc.com>, <mbs@ourrocklandoffice.com>, <jdp3@westchestergov.com>, <klathrop@independence.net>, <HearingDocket@nrc.gov>, <LGM1@nrc.gov>, <PAH@nrc.gov>, <REW@nrc.gov>
Date: Tue, Dec 4, 2007 12:50 AM
Subject: Appeal of Board Order of December 3rd, 2007

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 NUCLEAR REGULATORY COMMISSION
 ATOMIC SAFETY AND LICENSING BOARD
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Pronunciation:

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Function:

noun

Etymology:

Middle English prikke, from Old English prica; akin to Middle Dutch pric

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Date:

before 12th century

1: a mark or shallow hole made by a pointed instrument2 a: a pointed instrument or weapon b: a sharp projecting organ or part3: an instance of pricking or the sensation of being pricked: as a: a nagging or sharp feeling of remorse, regret, or sorrow b: a slight sharply localized discomfort <the prick of a needle>4usually vulgar : penis

(<http://www.merriam-webster.com/dictionary/penis>) 5 usually vulgar : a spiteful or contemptible man often having some authority.

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December 3rd, 2007
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1 Licensing Board Order (Granting An Extension Of Time Within Which To File Requests For Hearing) at 5 (Nov. 29, 2007).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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Dr. Kaye D. Lathrop

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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

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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.

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

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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.
 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 s
 atisfaction 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

*****Check out AOL's list of 2007's hottest
 products.
 (<http://money.aol.com/special/hot-products-2007?NCID=aoltop00030000000001>)

CC: <SECY@nrc.gov>, <rsb1@nrc.gov>