



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

January 31, 2008

Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. Kaye D. Lathrop
Administrative Judge
Atomic Safety and Licensing Board
190 Cedar Lane E.
Ridgway, CO 81432

Dr. Richard E. Wardwell
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

In the Matter of
Entergy Nuclear Operations, Inc.
(Indian Point Nuclear Generating Units 2 and 3)
Docket Nos. 50-247-LR/ 50-286-LR

Dear Administrative Judges:

Enclosed for your information is a copy of a letter from Annette Vietti-Cook (Secretary of the Commission) to Susan Shapiro, Esq., dated January 30, 2008 (ADAMS Accession No. ML0803002430), in response to Ms. Shapiro's objection and request for hearing concerning the fire protection exemption modification issued on September 28, 2007. The Secretary's letter explains that the Atomic Energy Act does not afford hearing rights on an exemption request.

As the Licensing Board is aware, Ms. Shapiro has filed contentions seeking a hearing on the same exemption modification on behalf of her clients, in their request for hearing in the instant license renewal proceeding. See WestCAN/PHASE Contentions 2, 4, 5, 6, 7, 8, 9, 10, and 20; see *also* New York AG Contention 20. The NRC Staff may cite the Secretary's letter of January 30, 2008, during oral argument on the Petitioners' fire protection contentions.

Sincerely,

A handwritten signature in cursive script that reads "Sherwin E. Turk".

Sherwin E. Turk
Counsel for NRC Staff

Enclosure: As stated
cc w/encl.: Service List



SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 30, 2008

Susan Shapiro, Esquire
12 Perlman Drive
Spring Valley, NY 10977

RE: Objection to NRC's grant of an exemption to Indian Point Unit 3

Dear Ms. Shapiro:

We received your petition on behalf of several organizations expressing your objection to the U.S. Nuclear Regulatory Commission's (NRC) September 28, 2007 grant of an exemption concerning Indian Point Unit 3 fire protection standards. The action you are challenging is an exemption from NRC regulations; it is not a license amendment as asserted in your petition. In *Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2)*, CLI-00-5, 51 NRC 90 (2000), the Commission examined the text and legislative history of §189a. of the Atomic Energy Act and concluded that the Atomic Energy Act does not provide for hearings on exemptions from NRC regulations. See also *Kelley v. Selin*, 42 F.3d 1501, 1517 (6th Cir. 1995), ("[T]he grant of an exemption from a generic requirement does not constitute an amendment to the reactor's license that would trigger hearing rights.") Accordingly, your request for a hearing is denied.

Sincerely,

/RA/

Annette Vietti-Cook

Martin J. O'Neill, Esquire