



OFFICE OF THE
GENERAL COUNSEL

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

February 27, 2008

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Atomic Safety and Licensing Board Panel
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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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:

The NRC Staff ("Staff") submits this letter in response to the letter of February 19, 2008, transmitted to the Licensing Board by Paul Bessette, Esq., Counsel for Entergy Nuclear Operations, Inc. ("Entergy"). In his letter, Mr. Bessette presented various procedural suggestions for the Licensing Board's consideration, regarding the oral argument scheduled for the week of March 10- 14, 2008. The Staff's views with respect to those suggested procedures are as follows.

1. The Staff joins in Entergy's request that the Licensing Board confirm the dates for oral argument; in addition, the Staff requests that the Licensing Board inform the parties as to the order of petitioners' contentions to be heard, and the order of the parties' presentations to be made. Further, in light of the statement by Counsel for WestCAN, et al., that two of their attorneys will be unavailable for argument as scheduled due to vacation plans or the need to attend sessions of the New York State Assembly (see letter from Sarah L. Wagner, Esq. to the Licensing Board dated February 26, 2008, and "Notification of Conflicts Anticipated during the Week of March 10, 2008," filed January 30, 2008), the Staff requests that the Licensing Board clarify whether any oral argument will be held on those parties' contentions, and if so, when.

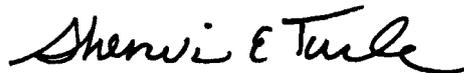
2. With respect to arguments on the petitioners' standing to intervene, the Staff notes that the standing of most petitioners was not opposed by Entergy or the Staff. Accordingly, oral arguments on standing may be useful only with respect to those petitioners whose standing to intervene has been contested (*i.e.*, the Sierra Club and Richard L. Brodsky).

3. With respect to the order of presentation, the Staff agrees with Entergy that the presentation of contentions in groups, based on the similarity of the issues raised, may be useful. This approach would allow the Licensing Board and parties to present the arguments, questions, and responses to questions in an orderly and focused manner, and would allow the petitioners to limit their arguments to those matters they believe have not been adequately addressed by petitioners who had already presented their arguments on similar contentions.

4. The Staff does not agree with Entergy's suggestion that the petitioners should be required to appoint lead representatives to address "common proposed contentions." While the consolidation of intervenors may be appropriate under 10 C.F.R. § 2.316 after they have been admitted as parties, the Staff believes that at this stage each petitioner (or set of petitioners, in the case of WestCAN, *et al.*) should be allowed to present argument on the contentions which it authored and filed. Petitioners, however, have no authority or right to present argument on behalf of other petitioners. See, e.g., *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-86-34, 24 NRC 549, 550 n.1, *aff'd on other grounds*, ALAB-854, 24 NRC 783 (1986); *Puget Sound Power and Light Co.* (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 33 (1979). Accordingly, if a petitioner wishes to present its views on another petitioner's contentions, it should be required to provide its comments to the petitioner who filed the contention, who would decide whether to present them in its argument.

5. With respect to whether oral argument should be conducted on all contentions, the Staff agrees with Entergy that argument may not be useful if the admissibility of the contention is clear on the basis of the pleadings. Nonetheless, recognizing that there is no inherent right to present oral argument on the admissibility of contentions under 10 C.F.R. §§ 2.309, 2.329 and 2.331, the Staff believes that the petitioners and parties should be allowed to conduct limited oral argument on whichever of the contentions they deem appropriate. At the same time, the Licensing Board may limit the time allotted for argument on each contention or request that certain issues be addressed, in accordance with its authority under 10 C.F.R. §§ 2.319 and 2.331.

Sincerely,



Sherwin E. Turk
Counsel for NRC Staff

cc: Service List