

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 02/29/08
SERVED 02/29/08

ATOMIC SAFETY AND LICENSING BOARD

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

February 29, 2008

ORDER

(Scheduling Oral Argument on the Admissibility of Contentions)

The Board has set the following schedule for the Oral Argument to be held at the Richard J. Daronco Courthouse, 111 Dr. Martin Luther King Blvd., White Plains, New York. Representatives for Entergy and the NRC Staff shall be present for the entire week (or the duration of the oral argument should it be completed before the end of the week). All other litigants shall be in the courtroom and ready to proceed as scheduled below.¹

Consistent with the regular schedule at the Daronco Courthouse, the Board intends to conclude the proceeding by 5:00 pm each day. Once their presentations are completed, litigants may remain in the courtroom, or leave, as they deem appropriate. Likewise, a litigant may, but need not, be present when another litigant is scheduled for oral argument. If the

¹ All litigants are reminded that they must arrive at the Daronco Courthouse sufficiently in advance of the scheduled start of the proceeding so that they may clear security, find the courtroom, and be fully prepared to proceed before the time set.

Board has not finished asking questions of a litigant on the day scheduled, the Board will continue the argument the following morning. All litigants shall arrange their schedules accordingly.

The following schedule will be adhered to to the extent possible. If the Board concludes its questioning of the litigants scheduled for a specific day before 5:00 pm, we will recess until the next morning. Litigants need not be present before the day on which they are scheduled :

Monday, March 10, 2008, at 10:00 AM EDT² – (in order of appearance) Westchester County, The State of New York.

Tuesday, March 11, 2008, at 9:00 AM EDT – (in order of appearance) The Town of Cortlandt, The State of Connecticut, Riverkeeper, Inc.

Wednesday, March 12, 2008, at 9:00 AM EDT – (in order of appearance) Riverkeeper, Inc., Hudson River Sloop Clearwater, Inc. (Clearwater), Connecticut Residents Opposed to Relicensing of Indian Point (CRORIP).

Thursday, March 13, 2008, at 9:00 AM EDT – Westchester Citizen's Awareness Network, Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club - Atlantic Chapter, and Assemblyman Richard Brodsky (collectively, WestCAN).³

² The litigants are reminded that daylight savings time begins on March 9, 2008.

³ In a Licensing Board Order dated February 1, 2008, we stated that the Board would base its decision regarding the admissibility of WestCAN's contentions only on their Petition to Intervene and those supporting documents that we had listed in Appendix A to our Order unless WestCAN could demonstrate to the satisfaction of the Board that the other documents referred to by WestCAN in its Petition had been properly submitted and served (Appendix B). WestCAN attempted to meet this requirement in a pleading dated Feb. 11, 2008 (sent to the Board by USPS first class mail with a postmark of Feb. 12, 2008, and initially received by the Board on February 21, 2008 – the Board has no record of receiving an electronic copy of this submission even though the Certificate of Service states that service on the Board was perfected on February 11, 2008, via electronic mail.) WestCAN was unsuccessful. The Board will not consider those documents listed in Appendix B to the Board's Order of February 1, 2008, in support of the admissibility of WestCAN's contentions.

The Board recognizes that in its response to our Scheduling Order, WestCAN asserted that two of its representatives, Susan Shapiro and Assemblyman Richard Brodsky, are not available to participate in this proceeding during the week of March 10, 2008.⁴ However, since that filing, WestCAN has submitted an additional Notice of Appearance for Sarah L. Wagner.⁵ We also note that it does not appear that the New York Assembly is scheduled to meet on March 13, 2008. Accordingly, should Ms. Wagner and/or Richard Brodsky be available on this date, the Board proposes to conduct oral argument on the admissibility of WestCAN's contentions in White Plains, NY on Thursday, March 13, 2008. If, however, no representative of WestCAN is available on that day, the Board will conduct oral argument on the admissibility of WestCAN's contentions at the ASLBP Hearing Room in Rockville, Maryland, during the week of March 24, 2008, or as soon thereafter as is practicable.

No later than noon on March 6, 2008, WestCAN shall notify the Board whether it will proceed with the oral argument in White Plains, NY on March 13, 2008. If WestCAN is unable to proceed on March 13, it shall notify the Board of any conflicts that would prevent its representatives from appearing in Rockville, MD between March 24, and April 4, 2008. If they are notified by WestCAN that it can not proceed on March 13th, the NRC Staff and Entergy shall promptly notify the Board of any conflicts that they anticipate between March 24, and April 4, 2008.

The Board does not expect, nor will it entertain, presentations by the litigants on all the contentions presented. Rather, the Petitioners may, but need not, make opening statements

⁴ Notification of Conflicts Anticipated During the Week of March 10, 2007 (Jan. 30, 2008).

⁵ Notice of Appearance for Sarah L. Wagner, Esq. (Feb. 4, 2008).

which shall not exceed 10 minutes, in which they may speak generally regarding their Petitions to Intervene. The Petitioners shall then be prepared to answer questions posed by the Board regarding the contentions that they have submitted. The NRC Staff and Entergy may, but need not, make opening statements in response to each Petitioner's opening. These statements by the NRC Staff and Entergy shall not exceed 5 minutes each. Questions will then be addressed to the Petitioner, the NRC Staff, and Entergy as the Board deems appropriate.

We will follow this procedure because the purpose of this proceeding is to allow the Board to clarify its understanding of the Petitioners' contentions and the NRC Staff's and the Applicant's responses thereto. It is not the purpose of this proceeding to entertain general presentations regarding contentions which have already been adequately explained in the pleadings. Likewise, this proceeding is intended only as an opportunity for the Board to question, and the litigants to explain, what has previously been submitted. This will not be an evidentiary hearing and, without a specific exemption from the Board, the litigants will not be given an opportunity to supplement the already voluminous record at this point in the proceeding.

The Board has concluded that the standing of all Petitioners has been adequately discussed in the pleadings. Accordingly, we will have no questions regarding standing and the Board will not entertain any argument on the issue of standing.

With regard to the admissibility of contentions, the Board will not consolidate contentions prior to their being admitted. Accordingly, each litigant will be given an opportunity to answer questions relating to the contentions that they have presented. Moreover, the Board will only address questions regarding specific contentions to the proponent thereof and to the current parties, the NRC Staff and Entergy. Where the positions of the litigants on a particular

contention are clear to all of the members of the Board based on the pleadings, we will ask no questions and entertain no presentation regarding that contention.

Westchester County, which proposes to adopt the contentions submitted by the State of New York, is the first scheduled litigant. Westchester, the NRC Staff, and Entergy should be prepared to discuss the applicability of the ASLBP decision in Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 206-08 (2006) and the Commission decision in Consolidated Edison Co. of New York (Indian Point, Units 1 and 2), CLI-01-19, 59 NRC 109, 131-33 (2001) to Westchester's Petition. In addition, these litigants should be prepared to discuss the role that Westchester would have in this proceeding if it is admitted as a party by adopting New York's contentions, as opposed to the role that it would have in this proceeding if it were to participate as an interested governmental body pursuant to 10 C.F.R. § 2.315(c).

The Board notes that CRORIP has submitted a Section 2.335(b) Motion which is pending. CRORIP, the NRC Staff, and Entergy should be prepared to present oral argument on this Motion on Wednesday, March 12, 2008.

The Board also notes that there are a number of Motions to Strike that have been filed and are pending. These Motions focus on the appropriate content of a Reply under our Rules of Practice. 10 C.F.R. § 2.309(h)(2). The Board does not perceive the need for oral argument

on these motions. Furthermore we will not rule on them at this time. Rather we will address these Motions in our ruling on contention admissibility.⁶

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
February 29, 2008

⁶ However, we note at this time that the requirement established by 10 C.F.R § 2.323(b) that a “sincere effort” be made to “resolve the issue(s) raised in [a] motion” prior to filing contemplates something more than mere notification that a motion will be filed made moments before a deadline.

⁷ Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (3) Counsel for the State of New York; (4) Counsel for the State of Connecticut; (5) Counsel for Riverkeeper, Inc.; (6) Counsel for WestCAN, RCCA, PHASE, the Sierra Club - Atlantic Chapter; and Richard Brodsky; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) Counsel for Westchester County; and (10) Counsel for the Town of Cortlandt.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SCHEDULING ORAL ARGUMENT ON THE ADMISSIBILITY OF CONTENTIONS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by R. L. Giitter] _____
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Dated at Rockville, Maryland
this 29th day of February 2008