

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3)

NRC STAFF'S ANSWER IN OPPOSITION TO CRORIP'S APPEAL
FROM LBP-08-13 AND THE LICENSING BOARD'S "ORDER
(DENYING CRORIP'S 10 C.F.R. § 2.335 PETITION)"

Marcia J. Simon
Sherwin E. Turk
Counsel for NRC Staff

August 21, 2008

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	i
INTRODUCTION	1
BACKGROUND	2
DISCUSSION.....	4
I. The Board Properly Denied CRORIP’s Petition for Failure to Make a A Prima Facie Showing of Special Circumstances to Justify a Waiver	4
A. Legal Standards Governing Petitions for Waiver Under 10 C.F.R. § 2.335	4
B. The Board Properly Denied Waiver of the Category 1 Exclusion For Public and Occupational Radiation Doses in the GEIS.....	5
C. The Board Properly Denied CRORIP’s Request for Waiver Of the “Reference Man” Standard in the GEIS.....	9
II. The Board Properly Denied CRORIP’s Petition for Intervention	10
CONCLUSION	11

TABLE OF AUTHORITIES

Page

ADMINISTRATIVE DECISIONS

Commission:

Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11-13 (2001) 5

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 37-8 (2006) 8, 9

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) and *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007)..... 10

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-74-32, 8 AEC 217 (1974) 10

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)..... 11

Atomic Safety and Licensing Appeal Board:

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974)..... 10

Atomic Safety and Licensing Board:

Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC ____ (July 31, 2008) (slip. op.)*passim*

Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3), "Order (Denying CRORIP's 10 C.F.R. § 2.335 Petition)" (July 31, 2008) (unpublished)*passim*

Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 252 (2006)..... 10

REGULATIONS

10 C.F.R. § 2.309..... 11

10 C.F.R. § 2.309(f)(1)(iii) 11

10 C.F.R. § 2.311 1

10 C.F.R. § 2.311(a) 1

10 C.F.R. § 2.335.....*passim*

10 C.F.R. § 2.335(a)4, 11

10 C.F.R. § 2.335(b) 4

10 C.F.R. § 2.335(c)4, 5

10 C.F.R. § 2.335(d) 4

10 C.F.R. § 2.341..... 1

10 C.F.R. § 2.341(b)(3)..... 1

10 C.F.R. Part 24

10 C.F.R. § Part 51, Appendix B, Table B-1 5, 8

MISCELLANEOUS

72 Fed. Reg. 42,134, 42,135 (Aug. 1, 2007) 2

72 Fed. Reg. 55,834 (Oct. 1, 2007) 2

NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (“GEIS”)*passim*

Final Rule: Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,476 (June 5, 1996)..... 8

August 21, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
ENERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3)

NRC STAFF'S ANSWER IN OPPOSITION TO CRORIP'S APPEAL
FROM LBP-08-13 AND THE LICENSING BOARD'S
"ORDER (DENYING CRORIP'S 10 C.F.R. § 2.335 PETITION)"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.311(a) and 2.341(b)(3), the Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to Connecticut Residents Opposed to Relicensing of Indian Point and Nancy Burton's (collectively "CRORIP") Notice of Appeal dated August 11, 2008 ("Appeal"), appealing the Atomic Safety and Licensing Board's ("Board") July 31, 2008 "Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing)," LBP-08-13, 68 NRC ____ (2008), and its July 31, 2008 "Order (Denying CRORIP's 10 C.F.R. § 2.335 Petition)" ("Waiver Order").¹

For the reasons set forth below, the Staff submits that (a) the Board correctly found that CRORIP had failed to make a prima facie showing of special circumstances as required to obtain a waiver of the Commission's regulations, Waiver Order at 1; and

¹ CRORIP states that it is appealing under "the provisions of 10 C.F.R. §2.311." Appeal at 1. That provision pertains to appeals from rulings on petitions to intervene; CRORIP's appeal from the Board's Order denying its waiver petition lies under 10 C.F.R. § 2.341.

(b) the Board's rejection of CRORIP's sole contention – which wholly depended on the success of CRORIP's waiver petition – was entirely correct. For these reasons, as more fully set forth below, the Staff respectfully submits that CRORIP has failed to show any error by the Board, and its decisions should be affirmed.

BACKGROUND

On August 1, 2007, the NRC published a Notice of Opportunity for Hearing on the application of Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") to renew its operating licenses for Indian Point Nuclear Generating Units 2 and 3.² The Commission subsequently extended the filing deadline for petitions to intervene and requests for hearing from October 1 until November 30, 2007,³ and the Board granted an additional extension, until December 10, 2007, for CRORIP to file its petition to intervene.⁴

On December 10, 2007, CRORIP filed its petition for leave to intervene, in which it set forth a single contention -- alleging that the health risks due to radiation exposure and releases were not adequately addressed in the license renewal application ("LRA").⁵ Accompanying the petition to intervene was a petition seeking a waiver of Commission

² 72 Fed. Reg. 42,134, 42,135 (Aug. 1, 2007).

³ 72 Fed. Reg. 55,834 (Oct. 1, 2007).

⁴ "Order (Granting an Extension of Time to CRORIP Within Which to File Requests For Hearing)" (Dec. 5, 2007).

⁵ "Connecticut Residents Opposed to Relicensing of Indian Point and Its Designated Representative's Petition to Intervene and Request for Hearing" (Dec. 11, 2007) ("CRORIP Petition"). The entire contention reads as follows (*id.* at 4):

Health risks from the cumulative effects of radiation exposure traceable to Indian Point routine and accidental releases during the projected relicensing term are substantial, have not been adequately accounted for in the LRA and constitute new information which must be but which has not been analyzed under 10 CFR Part 51.

regulations under 10 C.F.R. § 2.335,⁶ in which CRORIP asserted that the NRC's rule adopting the Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("GEIS") (NUREG-1437), would not serve the purposes for which it was adopted "with regard to (a) its exclusion of radiation exposures to the public and occupational radiation exposures during the license renewal term as Category 1 excluded issues which do not require site-specific analysis and (b) its use of the 'Reference Man' dose models from 1980."⁷ In support of its Waiver Petition, CRORIP filed the Affidavit of its representative, Nancy Burton⁸ -- which, in turn, referred to and incorporated the Declarations of Joseph J. Mangano and Helen M. Caldicott (filed with CRORIP's petition to intervene), and cited certain studies or reports pertaining to radiological doses.

On January 22, 2008, Entergy and the Staff filed responses to CRORIP's petition to intervene and the Waiver Petition.⁹ CRORIP filed a combined reply to the NRC Staff and Entergy on February 8, 2008.¹⁰ On July 31, 2008, the Board issued its Waiver Order, in which the Board denied CRORIP's Waiver Petition. Also on July 31, 2008, the Board issued LBP-08-13 ("Memorandum and Order (Ruling on Petitions to Intervene and

⁶ "Connecticut Residents Opposed to Relicensing of Indian Point and Its Designated Representative's 10 CFR § 2.335 Petition" (Dec. 10, 2007) ("Waiver Petition").

⁷ Waiver Petition at 1.

⁸ "Nancy Burton Affidavit in Support of [CRORIP] and Its Designated Representative's 10 CFR § 2.335 Petition" (Dec. 10, 2007) ("Burton Affidavit").

⁹ "NRC Staff's Response to Petitions for Leave to Intervene Filed by (1) Connecticut Attorney General Richard Blumenthal, (2) Connecticut Residents Opposed to Relicensing of Indian Point, and Nancy Burton, . . .;" (Jan. 22, 2008); "NRC Staff's Response to the Petition for Waiver of Commission Regulations Filed by [CRORIP]" (Jan. 22, 2008) ("Staff Response to Waiver Petition"); "Answer Of Entergy Nuclear Operations, Inc. Opposing Request For Hearing, Petition To Intervene And Petition For Waiver Of Connecticut Residents Opposed To Relicensing Of Indian Point" (Jan. 22, 2008).

¹⁰ "[CRORIP] and Nancy Burton's Reply to Answers of NRC Staff and Entergy Nuclear Operations, Inc. Opposing Request for Hearing, Petition to Intervene and Petition for Waiver" (Feb. 8, 2008).

Requests for Hearing)”), in which the Board found, in pertinent part, that CRORIP’s sole contention was outside the scope of the license renewal proceeding and therefore inadmissible. LBP-08-13, slip op. at 224. CRORIP filed its Appeal on August 11, 2008.

DISCUSSION

As discussed below, the Board properly found that CRORIP failed to make the required showing of special circumstances required to justify a waiver of the GEIS Category 1 exclusion or the “Reference Man” standard. The Board also found, correctly, that absent such a waiver, CRORIP’s contention was inadmissible and outside the scope of this proceeding. CRORIP has failed to show that these rulings were in error.

I. The Board Properly Denied CRORIP’s Waiver Petition for Failure to Make a Prima Facie Showing of Special Circumstances to Justify a Waiver.

A. Legal Standards Governing Petitions for Waiver Under 10 C.F.R. § 2.335.

In adjudicatory proceedings subject to 10 C.F.R. Part 2, attacks on Commission rules and regulations are prohibited “except as provided in [§ 2.335(b), (c) and (d)].”

10 C.F.R. § 2.335(a). Subsections (b) and (c) of § 2.335 further provide as follows:

(b) A party to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof . . . be waived or an exception made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. . . .

(c) If . . . the presiding officer determines that the petitioning party has not made a prima facie showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or

aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter . . . and the presiding officer may not further consider the matter.

Id.; emphasis added.

B. The Board Properly Denied Waiver of the Category 1 Exclusion for Public and Occupational Radiation Doses in the GEIS.

CRORIP's contention unquestionably involves a challenge to a Category I issue, radiation exposure to the public and workers during the period of license renewal, which the Commission has determined to be a generic issue for all applicants.¹¹ The Board, citing the Commission's decision in *Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4)*, CLI-01-17, 54 NRC 3 (2001), correctly recognized that such issues are outside the scope of a license renewal proceeding and can only be challenged if a waiver is granted. Waiver Order at 2 (citing *Turkey Point*, CLI-01-17, 54 NRC at 11-13). After examining the purpose of the Category 1 issue exclusion in the GEIS, as set forth in Commission case law and the final rule implementing the GEIS, and after considering CRORIP's petition and supporting documents, the Board concluded that CRORIP "alleged, but did not demonstrate the existence of special circumstances." *Id.* The Board then properly denied the Waiver Petition because it "fail[ed] to make the *prima facie* showing of special circumstances that is a prerequisite to the granting of any exception to, or waiver of the regulations" *Id.* at 1.

In challenging the Board's Waiver Order, CRORIP first argues that the Board erred in finding that the "GEIS's projections of future ranges of doses as being within

¹¹ Table B-1 of Appendix B to 10 C.F.R. Part 51 sets forth the Commission's generic determination of the environmental impacts of Category 1 issues, and identifies the matters that are to be considered on a site-specific basis as Category 2 issues. In Table B-1, radiological doses and occupational radiation exposures during the license renewal term are both classified as Category 1 issues whose impacts have been determined to be "SMALL."

permissible doses has any relevance to Indian Point's unique operations, which do not conform with GEIS 'findings.'" Appeal at 6. CRORIP thus argues that it is inappropriate to apply the GEIS in this proceeding because circumstances at Indian Point are unique. In this regard, CRORIP asserts that "[f]acts informing the GEIS are inapplicable to Indian Point" because Indian Point's "operational life has been characterized by some of the highest releases of radiation to the air of any commercial nuclear power station in the nation and which are increasing." Appeal at 3. CRORIP cites a 40 percent increase in Indian Point's capacity factor during the past six years, and power uprate license amendments, claiming that these "correlate with" increased radiation releases. *Id.* Significantly, however, the documents cited and relied upon by CRORIP and its expert (Mr. Joseph Mangano) in fact show that Indian Point's releases have been within the range of other nuclear plants' releases, and have not increased over time. See Staff Response to Waiver Petition at 7-9, and Exhibits 1, 2 and 3 thereto.¹² CRORIP fails to explain how Indian Point's increase in capacity affects the soundness of the GEIS conclusions;¹³ it provides no evidence to show that radiological emissions at Indian Point exceed those considered in the GEIS; it provides no evidence that radiological emissions at Indian Point exceed those of all other nuclear plants; and it fails to explain

¹² CRORIP asserts that its expert (Mr. Mangano) had presented "a science-based expose of how Indian Point's releases have been among the highest in the nation and are rising drastically – by 40 per cent over the past six years." Appeal at 6. CRORIP fails, however, to point to any facts which could support these assertions; moreover, as stated in the discussion above, the documents relied upon by Mr. Mangano do not support his claims.

¹³ CRORIP appears to seek to shift its burden, stating, for example, that because there is no evidence before the Board that "any other nuclear power plant has experienced a 40 percent capacity factor increase during the past six years . . . the evidence submitted by petitioners establishes a *prima facie* case of a site-specific condition warranting granting of the waiver." *Id.* at 5-6. This argument is without merit. It was CRORIP's burden to make a *prima facie* showing of special circumstances, by providing evidence that the circumstances at Indian Point are different than those at other plants. CRORIP cannot meet its burden by arguing the opposite, *i.e.*, that there is no evidence that circumstances at Indian Point are the same as those at other nuclear power plants.

how its assertions can reasonably be argued to be valid, in light of the facts shown in the very documents cited by its expert.

CRORIP next argues that the Board erred because it “misconstrue[d] the [Waiver Petition] as not presenting ‘evidence that radiation levels differ for Indian Point as a unique problem compared to other nuclear power plants.’” Appeal at 6. CRORIP asserts, without citation to any specific facts or references, that the Declaration of Joseph Mangano provided that evidence. *Id.* In fact, however, Mr. Mangano’s Declaration claimed that “[like all nuclear power reactors,” Indian Point Units 2 and 3 “produce numerous fission products,” and “[like all nuclear power reactors,” they “emit radioactivity, in the form of gases and particles, into the air and water on a routine basis.” Mangano Declaration ¶¶ 3, 4; emphasis added. While he further claimed that “the amount of airborne releases from Indian Point exceeds that of most other U.S. reactors,” *id.*; emphasis added, the reports cited in his Declaration actually show that Indian Point’s releases have been well within the range of releases at other reactors. See Staff Response to Waiver Petition at 8-9, and footnotes 8 and 9.

The Board specifically considered Mr. Mangano’s assertions, including his argument concerning alleged links between cancer and proximity to Indian Point and increased levels of Strontium-90 found in baby teeth in certain counties located near the plant, and correctly found that those statements failed to identify any circumstances unique to Indian Point. Waiver Order at 6. The Board correctly found that CRORIP did not show that the “baby teeth” study established special circumstances unique to Indian Point. Waiver Order at 6. Further, the Board observed that the Commission has previously concluded that “[f]or the purposes of assessing radiological impacts . . . impacts are of small significance if doses to individuals and releases do not exceed

permissible levels in the Commission's regulations."¹⁴ CRORIP did not assert or show that the radiological releases that have occurred at Indian Point, or which may reasonably be anticipated in the future, have, or likely will exceed permissible regulatory limits. Moreover, CRORIP has not alleged or shown that radiological releases at Indian Point Units 2 and 3 have exceeded NRC regulatory dose limits, or that their radiological emissions exceed the range of emissions at other NRC-licensed nuclear reactors.¹⁵ The Board properly concluded that Mr. Mangano's statements fail to establish a *prima facie* showing that radiological emissions at Indian Point Units 2 and 3 are substantially different than those at other NRC-licensed facilities or have exceeded radiological dose limits. Waiver Order at 5. CRORIP has not shown that the Board erred in reaching these conclusions.

CRORIP asserts that the Board erred in concluding (based on Commission precedent) that "[e]ven if excessive radiological emissions have occurred at Indian Point they would pertain to current operations and therefore would not be within the scope of this proceeding."¹⁶ CRORIP asserts that in this regard, the Board "set an impossible hurdle for any petitioner to overcome," making it "impossible to establish a *prima facie* case based on known current circumstances." Appeal at 6-7. The Board's statement, however, simply reiterates the Commission's position as stated in *Millstone*, where the Commission held that a radiological emission exceeding the limits of a current license

¹⁴ Waiver Order at 4, quoting Final Rule: Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,476 (June 5, 1996). The Board also noted that the Commission has determined that "occupational radiation exposure during the license renewal period is small if projected maximum doses are within the range of doses experienced or permitted during normal operations." Waiver Order at 4, *citing* 10 C.F.R. Part 51, Appendix B, Table B-1.

¹⁵ See Staff Response to Waiver Petition at 7-9, and Exhibits 1, 2 and 3 thereto.

¹⁶ Waiver Order at 5 n.18, *citing Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 37-38 (2006).

“would be reason for corrective enforcement action of an ‘everyday operational issue’” but “would not be a reason for denying license renewal.” *Millstone*, CLI-06-4, 63 NRC at 37-38. While CRORIP asserts that “future releases exceeding limitations can hardly be postulated to occur except based on information known about current and past operations,” Appeal at 7, this assertion lacks any factual support in this proceeding, inasmuch as Indian Point emissions have not exceeded regulatory limits or the range of emissions at other reactors. Moreover, CRORIP’s argument, if accepted, would have the Commission engage in improper speculation as to whether future releases at any nuclear plant will exceed current or past emission levels.

C. The Board Properly Denied CRORIP’s Request for Waiver of the “Reference Man” Standard in the GEIS.

In its Waiver Order, the Board denied CRORIP’s request for a waiver of the “Reference Man” standard, finding that CRORIP sought a “general regulatory change” that was “not limited to the issue of relicensing at Indian Point, but rather presents an argument against use of the Reference Man dose in any relicensing proceeding. CRORIP fails to show any special circumstances warranting a different dose model for permissible dose levels for the area specifically surrounding Indian Point.” Waiver Order at 6-7. On appeal, CRORIP asserts that the Board erroneously denied the requested waiver of the “Reference Man” standard, but provides no further explanation of why the Board’s decision was erroneous. Appeal at 7. Instead, CRORIP merely reiterates earlier statements concerning the 40 percent capacity factor increase, the GEIS projection of a decrease in radiation releases, and increases in radiation releases at Indian Point which have no bearing on waiver of the “Reference Man” standard. These assertions fail to show any error by the Board.

As the Licensing Board correctly recognized, CRORIP's statements in its Waiver Petition demonstrated that it sought a change to NRC's general regulatory framework.¹⁷ Further, even if CRORIP's assertions concerning the "Reference Man" standard were true, they would apply to any license renewal proceeding, as well as to nuclear reactor regulation in general. Therefore, they fail to establish a prima facie showing that this provision of the GEIS should be set aside in this specific license renewal proceeding. Moreover, as the Board noted, a license renewal proceeding "is not the proper forum for challenging . . . the basic structure of the agency's regulatory process."¹⁸ For these reasons, the Licensing Board's denial of waiver of the "Reference Man" standard should be affirmed.

II. The Board Properly Denied CRORIP's Petition for Intervention

In denying CRORIP's petition for intervention, the Board explicitly found that CRORIP's sole contention was outside the scope of the proceeding because it "is a direct challenge to the Commission's GEIS for the relicensing of nuclear power generating facilities." LBP-08-13, slip op. at 224. The Commission has held that "any contention on a 'Category 1' issue amounts to a challenge to our regulation that bars challenges to generic environmental findings." *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) and Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station)*, CLI-07-3, 65 NRC 13, 20 (2007) . An attack on a Commission

¹⁷ CRORIP stated that "radiation protection regulations applicable to U.S. nuclear power plants is [sic] still stuck in the past – their 'reference' person is a man. . . . Thus, a central principle of environmental health protection – protecting those most at risk – women, children, and fetuses – is missing from the regulatory framework." Burton Affidavit at ¶¶ 16-18.

¹⁸ Waiver Order at 7, quoting *Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site)*, LBP-07-3, 65 NRC 237, 252 (2006); *Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974).

rule or regulation is outside the scope of an adjudicatory proceeding unless an exception or waiver is granted. 10 C.F.R. § 2.335(a).

On appeal, CRORIP asserts that “[i]n every respect, the contention meets the NRC’s legal standards” and that the Board “did not identify any failings by the petitioners in complying with the technical and substantive standards of 10 C.F.R. § 2.309.” Appeal at 4. This assertion is incorrect. Under the Commission’s contention admissibility rules, a petition must, *inter alia*, “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding.” 10 C.F.R. § 2.309(f)(1)(iii). A contention that fails to comply with any one of the contention admissibility requirements will not be admitted. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). The Board explicitly found that CRORIP’s contention was outside the scope of the proceeding, and, as explained in Section I *supra*, the Board’s decision to deny CRORIP’s Waiver Petition was proper. Therefore, the Board properly found, in LBP-08-13, that CRORIP’s contention was inadmissible.

CONCLUSION

The Board provided a well-reasoned basis for denying CRORIP’s waiver petition and petition to intervene. Moreover, for the reasons set forth above, CRORIP has failed to show any error in the Board’s decisions. Accordingly, the Staff respectfully submits that the Licensing Board’s July 31, 2008 Order denying CRORIP’s Waiver Petition, and its ruling (in LBP-08-13) denying CRORIP’s petition to intervene, should be affirmed.

Respectfully submitted,



Marcia J. Simon
Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 21st day of August 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER IN OPPOSITION TO CRORIP'S APPEAL FROM LBP-08-13 AND THE LICENSING BOARD'S 'ORDER (DENYING CRORIP'S 10 C.F.R. § 2.335 PETITION)," dated August 21, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, with copies by electronic mail, as indicated by double asterisk, this 21st day of August, 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
E-mail: Lawrence.McDade@nrc.gov

Office of Commission Appellate
Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
E-mail: OCAAMAIL.resource@nrc.gov

Dr. Richard E. Wardwell*
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Richard.Wardwell@nrc.gov

Office of the Secretary*
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Hearing.Docket@nrc.gov

Dr. Kaye D. Lathrop*
Atomic Safety and Licensing Board Panel
190 Cedar Lane E.
Ridgway, CO 81432
E-mail: Kaye.Lathrop@nrc.gov

Zachary S. Kahn*
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Zachary.Kahn@nrc.gov

Atomic Safety and Licensing Board Panel*
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001
(Via Internal Mail Only)

Marcia Carpentier*
Law Clerk
Atomic Safety and Licensing Board
Mail Stop: T-3 E2B
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Marcia.Carpentier@nrc.gov)

Kathryn M. Sutton, Esq.**
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com
E-mail: martin.o'neill@morganlewis.com

William C. Dennis, Esq.**
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
E-mail: wdennis@entergy.com

Michael J. Delaney, Esq.**
Vice President – Energy Department
New York City Economic Development
Corporation (NYCDEC)
110 William Street
New York, NY 10038
E-mail: mdelaney@nycedc.com

Susan H. Shapiro, Esq.**
21 Perlman Drive
Spring Valley, NY 10977
E-mail: mbs@ourrocklandoffice.com

Arthur J. Kremer, Chairman**
New York Affordable Reliable Electricity
Alliance (AREA)
347 Fifth Avenue, Suite 508
New York, NY 10016
E-mail: ajkremer@rmfpc.com
kremer@area-alliance.org

Manna Jo Greene**
Hudson River Sloop Clearwater, Inc.
112 Little Market Street
Poughkeepsie, NY 12601
E-mail: Mannaio@clearwater.org

Justin D. Pruyne, Esq.**
Assistant County Attorney
Office of the Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
E-mail: jdp3@westchestergov.com

John LeKay**
FUSE USA
351 Dyckman Street
Peekskill, NY 10566
E-mail: fuse_usa@yahoo.com

Daniel E. O'Neill, Mayor**
James Seirmarco, M.S.
Village of Buchanan
Municipal Building
Buchanan, NY 10511-1298
E-mail: yob@bestweb.net

John J. Sipos, Esq.**
Charlie Donaldson, Esq.
Assistants Attorney General
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, NY 12224
E-mail: john.sipos@oag.state.ny.us

Joan Leary Matthews, Esq.**
Senior Attorney for Special Projects
New York State Department of
Environmental Conservation
Office of the General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500
E-mail: jmatthe@gw.dec.state.ny.us

Diane Curran, Esq.**
Harmon, Curran, Spielberg & Eisenberg,
LLP
1726 M Street, NW, Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

Robert Snook, Esq.**
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CN 06141-0120
E-mail: robert.snook@po.state.ct.us

Daniel Riesel, Esq.**
Thomas F. Wood, Esq.
Ms. Jessica Steinberg, J.D.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
E-mail: driese1@sprlaw.com
jsteinberg@sprlaw.com

Ms. Nancy Burton**
147 Cross Highway
Redding Ridge, CT 06876
E-mail: nancyburtonct@aol.com

Mylan L. Denerstein, Esq.**
Janice A. Dean, Esq.
Executive Deputy Attorney General,
Social Justice
Office of the Attorney General
of the State of New York
120 Broadway, 25th Floor
New York, NY 10271
E-mail: mylan.denerstein@oag.state.ny.us
janice.dean@oag.state.ny.us


Victor Tafur, Esq.**
Phillip Musegaas, Esq.
Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591
E-mail: phillip@riverkeeper.org
vtafur@riverkeeper.org

Richard L. Brodsky, Esq.**
5 West Main St.
Elmsford, NY 10523
E-mail: brodskr@assembly.state.ny.us
richardbrodsky@msn.com

Elise N. Zoli, Esq.**
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, MA 02109
E-mail: ezoli@goodwinprocter.com

Sarah L. Wagner, Esq.**
Legislative Office Building, Room 422
Albany, NY 12248
E-mail: sarahwagneresq@gmail.com

John Louis Parker, Esq.**
Office of General Counsel, Region 3
New York State Department of
Environmental Conservation
21 South Putt Corners Road
New Paltz, NY 12561-1620
E-mail: jlparker@gw.dec.state.ny.us



Marcia J. Simon
Counsel for NRC Staff