

RAS E-199

September 22, 2008 (4:00pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

_____)	
In the Matter of)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247- LR and
)	50-286-LR
(Indian Point Nuclear Generating)	
Units 2 and 3))	September 22, 2008
_____)	

TOWN OF CORTLANDT'S ANSWER IN SUPPORT OF NEW YORK STATE'S
MOTION REQUESTING CONSIDERATION OF ADDITIONAL MATTERS
IN SCHEDULING AND CASE MANAGEMENT ORDER

I. Background

The Town of Cortlandt ("Cortlandt") files this Answer in support of the State of New York ("New York") Motion, pursuant to 10 C.F.R. § 2.323(c). On April 23, 2007, Entergy Nuclear Operations, Inc. ("Entergy") submitted a License Renewal Application for Indian Point Units 2 and 3 to the Nuclear Regulatory Commission ("NRC"). On November 29, 2007, Cortlandt filed its Petition to Intervene and Request for Hearing. Subsequent to Answers by the NRC Staff and Entergy, Cortlandt filed its Reply on February 8, 2007. On July 31, 2008, the Atomic Safety and Licensing Board (the "Board") denied Cortlandt's Petition to Intervene and Request for Hearing, but stated that Cortlandt may participate as an interested governmental entity on the admitted contentions, pursuant to 10 C.F.R. § 2.315(c).¹ On August 20, 2008,

¹ See Board Order (Ruling on Petitions to Intervene and Requests for Hearing), LBP-08-13 at 4 (July 31, 2008) (unpublished) (the "Order"). In its Order, the Board admitted three parties: (1) the State of New York; (2) Riverkeeper; and (3) Hudson River Sloop Clearwater.

TEMPLATE = SECF-835

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Cortlandt submitted its Request for Participation by a Person Not a Party.² On September 10, 2008, the State of New York submitted a Motion,³ in which it requested the Board to consider several issues related to scheduling and discovery.

II. Rights of an Interested Governmental Entity

Cortlandt is an interested governmental body, within the meaning of 10 C.F.R. § 2.315(c). As Cortlandt previously stated in its Request,⁴ Cortlandt's right to participate is established by the fact that Indian Point Nuclear Generating Units 2 and 3 are located within Cortlandt. As an interested governmental entity, Cortlandt may "introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under § 2.341 with respect to [any] admitted contentions." 10 C.F.R. § 2.315(c); see also Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2201 (Jan. 14, 2004) (an interested governmental body may "fil[e] testimony, briefs, and interrogat[e] witnesses").

Because Cortlandt may participate with respect to any admitted contention, Cortlandt must be afforded access to all documents during the hearing process. Discovery serves "as a device for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues." Hickman v. Taylor, 329 U.S. 495, 501 (1947). Additionally, discovery enables petitioners to "obtain the fullest possible knowledge of the issues and facts." Id.

² See Town of Cortlandt's Request for Participation by a Person not a Party (Aug. 20, 2008) ("Request"). NRC Staff does not object to Cortlandt's participation as an interested governmental entity. See NRC Staff's Response to "Town of Cortlandt's Request for Participation by a Person not a Party" (Sept. 2, 2008, as corrected, Sept. 11 2008).

³ See New York State Motion Requesting Consideration of Additional Matters in Scheduling and Case Management Order (Sept. 10, 2008) ("New York Motion").

⁴ See Request at 1.

Without access to all issues and facts prior to the hearing, Cortlandt will be unable to reasonably participate in the proceedings.⁵

III. The State of New York's Issues for the Board's Consideration should be Granted

In its Motion, the State of New York ("New York") requested that the Board consider several issues, including: (1) scheduling a site visit to Indian Point Units 1, 2, and 3; (2) holding a conference regarding discovery of electronically stored information; (3) scheduling a deadline for filing waiver petitions pursuant to 10 C.F.R. § 2.335; and (4) notifying New York and other parties of meetings and communications between NRC Staff and Entergy. See New York Motion at 3-5. Although Cortlandt is not a "party" in these proceedings, its role as an interested governmental entity is just as important. In some instances, Cortlandt's rights are broader than those of the admitted parties. For example, Cortlandt may participate in any admitted contention, whereas parties may only participate on contentions they sponsored or adopted. See Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 N.R.C. 619, 626-27 (2004). Therefore, Cortlandt's interest in a fair and open hearing process is just as important as the interests of the parties. As detailed below, Cortlandt urges the Board to grant the New York Motion if the hearing proceeds under Subpart G.⁶

In its Motion, New York requested that the Board authorize a site visit of Indian Point Units 1, 2, and 3 for the parties' counsel, staff, and experts. Additionally, New York requested that the parties participate in a conference to determine how the Board should consider production of electronically stored information ("ESI"). Both requests are appropriate in a

⁵ Cortlandt recognizes that the Board has not ruled whether the proceeding will proceed under the formal adjudication rules of Subpart G or the informal hearing procedures of Subpart L. Regardless of which hearing procedure the Board establishes, Cortlandt has a right to access the documents prior to the proceedings.

⁶ Cortlandt reserves its right to fully participate in all discovery, regardless of whether this proceeding continues under Subpart G or Subpart L.

Subpart G hearing. See 10 C.F.R. § 2.705(a) (discovery may be obtained by “permission to enter upon land or other property” and “by . . . production of documents or things”). As an interested governmental entity, Cortlandt’s representatives, experts, counsel, and/or staff, should also be authorized for any site visit and be able to participate in any conference regarding production of documents. The Board should include Cortlandt in any and all rulings regarding discovery so that Cortlandt may reasonably participate in the proceedings. See 10 C.F.R. § 2.315(c) (interested local governmental body will be “afford[ed] . . . a reasonable opportunity to participate in a hearing”).

Additionally, New York requested that the parties be given advance notification of meetings and communications between Entergy and NRC Staff. See New York Motion at 5. The Commission has recognized “the fundamental importance of meaningful public participation in our adjudicatory process.” Northern States Power Co. (Prairie Island Nuclear Generating Plants, Units 1 & 2), CLI-75-1, 1 N.R.C. 1, 2 (1975). The hearing provides the parties and interested governmental entities with the opportunity to engage in meaningful public participation by determining whether the applicant has fully complied with the NRC regulations and whether the facility will be able to safely operate for an additional twenty years. Therefore, the parties to the proceeding must have access to all pertinent information, including communications between the applicant and NRC Staff regarding license renewal. See 10 C.F.R. § 2.336(a)(2) (party must disclose “all documents and data compilations . . . that are relevant to the contentions”). Cortlandt, as an interested governmental entity, should be allowed to participate in any and all conferences among the parties, NRC Staff, and Entergy, regardless of which hearing procedure governs this proceeding. Cortlandt’s standing as an interested governmental body necessitates its participation in any and all meetings.

IV. Conclusion

For the reasons set forth above, the State of New York's Motion Requesting Consideration of Additional Matters in Scheduling and Case Management Order should be granted.

Dated:

September 22, 2008
New York, New York

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2008 a true copy of the foregoing TOWN OF CORTLANDT'S ANSWER IN SUPPORT OF NEW YORK STATE'S MOTION REQUESTING CONSIDERATION OF ADDITIONAL MATTERS IN SCHEDULING AND CASE MANAGEMENT ORDER, were served by electronic mail and by first class mail upon all parties, upon the following parties and participants:

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