

RAS E-182

Hearing Docket

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Sent: Wednesday, November 21, 2007 11:36 AM
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Subject: RE: Extension Request for WestCAN, RCCA, CAN, PHASE & undersigned Stakeholder
Attachments: *11.21ExtReq.pdf

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 USNRC

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November 21, 2007 (11:36am)

Honorable Chairman Klein
 Nuclear Regulatory Commission
 Washington, DC 20555
 chairman@nrc.gov

OFFICE OF SECRETARY
 RULEMAKINGS AND
 ADJUDICATIONS STAFF

Lawrence G. McDade,
 Chairman Atomic Safety and Licensing Board
 U.S. Nuclear Regulatory Commission
 Lgm1@nrc.gov

RE: ADDITIONAL EXTENSION REQUEST TO FILE FORMAL REQUESTS FOR HEARING and PETITIONS TO INTERVENE WITH CONTENTIONS, DUE TO DOCUMENT ACCESS ISSUES

Dear Honorable Chairman Klein & Chairman McDade:

Respectfully, Westchester Citizen's Awareness Network (WestCAN), Citizen's Awareness Network (CAN), Rockland County Conservation Association (RCCA), and Public Health and Sustainable Energy (PHASE), as well as the undersigned Stakeholders, that had signed the original extension request on November 7, 2007 (hereinafter collectively referred to as the "Stakeholders"), formally request that the NRC grant the citizen Stakeholders and other interested parties an extension of time to file our Formal Requests for Hearing, and Petitions to Intervene with contentions for 60 days from the date that all the document access issues stated below are fully and completely resolved.

It is conceded, that the NRC Commissioners granted a similar request that pushed the original deadline back to November 30th, 2007. In addition, the NRC Commissioners granted on November 16, 2007, a 10 day extension request by Friends United for Sustainable Energy (FUSE), citizen Stakeholders and other interested parties on November 7, 2007, on identical grounds, (attached as "Exhibit A"). This granted request

TEMPLATE = SELV-037

DS-03

pushing the deadline to December 10th, 2007 is based on "ADAMS malfunction, which did interrupt public access to the license renewal application and supporting materials".

Stakeholders assert the document access has been limited for the following reasons.

1. ADAMS electronic reading room malfunctioned and did not allow for web based access to Stakeholders during a substantial period of time during the limited filing period for Stakeholders to file Formal Request for Hearing and Petitions to Intervene with Contentions.
2. Design Basis Records for Indian Point 2 and 3;
3. Leak maps and Leak reports are Indian Point, including the updated version to be released by Entergy Fall of 2007;
4. Safety Analysis, as well as all versions of the FSAR's, UFSAR's and a full and complete list of ALL EXEMPTIONS, DEVIATIONS and EXCEPTIONS that Entergy wishes to carry over into the new superceding license (as is required in 10 CFR 54);

Each of these issues is more fully documented below:

1. ADAMS, the NRC's internet web document research service has been intermittently off line for extensive periods during the past few weeks, thereby preventing Stakeholders from accessing relevant to public documents needed to prepared intervenor contentions.

"ADAMS System Notices:

Public ADAMS is temporarily unavailable, so links to ADAMS documents on the NRC web site do not work either. We are working to restore service and apologize for any inconvenience you may experience. If you require immediate assistance, please contact the Public Document Room (PDR) staff at pdr@nrc.gov or 1-800-397-4209.

ADAMS has been down due to an extensive system crash for days as is reported by members from the NRC PDR room, the AGs office, and others besides the Stakeholders.

On approximately October 20, 2007 ADAMS begin crashing intermittently, and for about 16 days it was down for external users. It was restored approximately on November 15, 2007. For approximately 26 days of 60 day extension to file Petitions to Intervene ADAMS was unavailable to Stakeholders.

Citrix is not functional on many computer systems. Only if Stakeholders had extensive, large and expensive computer systems could they even attempt to access ADAMS using Citrix, but only if all firewalls are removed. Thereby exposing citizen Stakeholders to unwanted exposure and potential corruption by electronic virus'.

2. Stakeholders's expert witness, Ulrich Witte, made a FOIA request on Sept 25, 2007 for the 1968 FSAR for Unit 2, which is relevant to contentions associated with Design Basis Criteria issues. On October 18, 2007 the NRC staff sent a fax stating it would costs \$846.50 for copying costs. On the same day, Mr. Witte then requested in writing that the document be made available in the electronic reading room. The NRC staff responded by writing "The document is still being reviewed by our analysts for possible release." As of October 31, 2007, and after more than five weeks, the request that was apparently approved subject to payment of fees, was "still being reviewed" as Mr. Witte was informed by a member of the PDR room, and that an actual date for placing the document in the electronic reading room was unknown, Given that FSARs do not

contain safeguards information or security information, it is difficult to understand why it takes weeks to review a document for "possible release."

3. Maps of the ongoing underground leaks of tritium, strontium and cesium radiation, under the nuclear plants Indian Point 1, 2 and 3 that both the NRC and Entergy have displayed at various public meetings yet are unavailable through the NRC or Entergy (herein referred to as "Entergy's leak maps").

The NRC's maps of the leaks, are unclear, and differ from the maps used by the NRC in meeting with Stakeholders.

Richard Barkley of the NRC has told me that Entergy's leak maps are proprietary property of Entergy. They will not become available until after the NRC receives Entergy's leak report later this fall, yet as of November 19, 2007 such documents are still unavailable, thereby making the November 30, 2007 deadline to file Intervener Petitions highly prejudicial in favor of the licensee at the expense of the Stakeholders and other citizens whose best interests are supposed to be served by this Federal regulatory body.

Clearly, Entergy's leak maps and the upcoming leak report contain vital information directly related to potential environmental impacts and infrastructure aging issues, and consequently Entergy's License Renewal Application ("LRA"). The maps are necessary for Stakeholders to file properly and fully documented Intervener contentions.

In fact, the NRC used Entergy's leak maps to discuss the leaks in public meetings with representatives of Riverkeeper, Clearwater, WestCAN,,and IPSEC. In addition, Entergy's leak maps, minus the Cesium map, were displayed in the lobby of a public meeting, however copies for inspection are unavailable.

Â§ 51.3 Resolution of conflict.

In any conflict between a general rule in subpart A of this part and a special rule in another subpart of this part or another part of this chapter applicable to a particular type of proceeding, the special rule governs.

Â§ 51.16 Proprietary information.

(a) Proprietary information, such as trade secrets or privileged confidential commercial or financial information, will be treated in accordance with the procedures provided in Â§ 2.390 of this chapter.

(b) Any proprietary information which a person seeks to have withheld from public disclosure shall be submitted in accordance with Â§ 2.390 of this chapter. When submitted, the proprietary information should be clearly identified and accompanied by a request, containing detailed reasons and justifications, that the proprietary information be withheld from public disclosure. A non-proprietary summary describing the general content of the proprietary information should also be provided.

Â§ 2.390 Public inspections, exemptions, requests for withholding. (pertinent parts)

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed

by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of Â§ 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of Â§ 9.19 of this chapter.

(2) A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing or rulemaking actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

(3) The Commission shall determine whether information sought to be withheld from public disclosure under this paragraph:

(i) Is a trade secret or confidential or privileged commercial or financial information; and (ii) If so, should be withheld from public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:

- (i) Whether the information has been held in confidence by its owner;
- (ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefore;
- (iii) Whether the information was transmitted to and received by the Commission in confidence;
- (iv) Whether the information is available in public sources;
- (v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(4) If the Commission determines, under paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position, and whether the information should be withheld from public disclosure under this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it will be returned to the applicant.

Withholding from public inspection does not affect the right, if any, of persons properly and directly concerned to inspect the document. Either before a decision of the Commission on the matter of whether the information should be made publicly available or after a decision has been made that the information should be withheld from public disclosure, the Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection under a protective agreement by contractor personnel or government officials other than NRC officials, by the presiding officer in a proceeding,

and under protective order by the parties to a proceeding. In camera sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such in camera session will be made publicly available.

4. Stakeholders contend that the Public's Right to be fully appraised of the risks involved in Entergy's License Renewal Application Request, that we must be given unfettered access to any and all documents that compromise the CLB (Current Licensing Basis), as well as all documents (including a redacted copy of Chapter 14 Safety Analysis) used in ascertaining risks for the site, and creating the proposed Aging Management Plans. Stakeholders expert, and all those wishing to intervene cannot gauge the adequacy of Aging Management plans without being able to review the Safety Analysis, as well as all versions of the FSAR's, UFSAR's and a full and complete list of ALL EXEMPTIONS, DEVIATIONS and EXCEPTIONS that Entergy wishes to carry over into the new superceding license (as is required in 10 CFR 54) with justifications why they should be carried over.

NRC ISSUED MULTIPLE EXTENSIONS FOR THE BACK-UP POWERED SIREN SYSTEM REQUIRED UNDER THE ENERGY POLICY ACT OF 2005 and POSTPONED AN INSPECTION OF INDIAN POINT 3 ON 9/11, 2007:

Recently, the NRC has issued extensions to Entergy to install the required back-up powered siren system, that is required under the Energy Policy Act of 2005 to protect public health and safety.

The NRC issued a Confirmatory Order in January 2006 requiring the installation of back-up power for the siren system at Indian Point by Jan. 30, 2007. In January 2007, Entergy requested and received an extension but missed that deadline of April 15, 2007. The NRC merely fined Entergy \$130,000 and extended the deadline to August 24, 2007, this new deadline has also been missed.

FURTHER, on September 11, 2007 the NRC suspended an augment inspection at Indian Point 3 due to the numerous unplanned shutdowns. The inspection audit was postponed because the Licensee could not produce the Design Basis Records relevant for the inspection. To date the postponed inspection has not been rescheduled.

If Entergy and the NRC cannot find Design Basis Records, how are Stakeholders suppose to properly assess the License Renewal Application's technical adequacy. Therefore, until Entergy and the NRC produce and make available the Design Basis Records, that are a critical and important subset of the license basis, Stakeholders must be granted an extension.

These above examples are clear evidence that the NRC often grants extensions for Entergy.

CONCLUSION:

The requested additional extension is in the best interest of the public health and safety. A denial of this extension request would result in interference with Stakeholders' rights to equal protection and would be clearly discriminatory.

Therefore, Stakeholder, including WestCAN, CAN, RCCA, and PHASE, as well as the undersigned Stakeholders that had signed the original extension request on November 7, 2007, (collectively referred to as the "Stakeholders") do hereby Formally Request that the Commission grant an extension of time to file Formal Petitions to Intervene, Formal Request for Hearing, and contentions for all Interveners of 60 days from the date that all document access issues have been fully and completely resolved, and has been provided copies

of the documents, design basis, Entergy's leak maps, charts, and studies necessary to adequately review and comment on Entergy's License Renewal Application.

In light of the Commission's grant of an additional 10 day extension to FUSE USA, based on a nearly identical request, it would be highly inequitable for the Commission and the ASLB not to grant the request extension herein immediately.

We respectfully request a prompt response to this request.

Sincerely yours,

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