

October 3, 2008

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/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

NRC STAFF'S RESPONSE TO THE STATE OF CONNECTICUT'S
REQUEST TO PARTICIPATE AS AN INTERESTED GOVERNMENTAL BODY

The NRC Staff ("Staff") herein responds to the "Request of the State of Connecticut for an Opportunity to Participate as an Interested Government Body in Proceeding and Hearing on Relicensing of Indian Point Units 2 and 3" ("Request"), filed by the State of Connecticut ("Connecticut" or "State") on September 25, 2008. For the reasons set forth below, the Staff does not oppose the State's request for leave to participate in this proceeding as an interested governmental entity under 10 C.F.R. § 2.315(c), (a) limited to the scope of the contentions identified by the State, as admitted by the Board, and (b) subject to the State's compliance with the Commission's Rules of Practice in 10 C.F.R. Part 2 and all existing and future rulings which may be issued by the Licensing Board and the Commission in this proceeding.

DISCUSSION

In its Request, Connecticut observes that it had previously filed a petition to intervene in this proceeding, which the Licensing Board denied in its ruling on petitions to intervene. Request

at 2.¹ Further, Connecticut states that the Board's ruling in LBP-08-31 had indicated that "the State had an opportunity to appear and participate in proceedings as an interested government body" pursuant to 10 C.F.R. § 2.215(c). *Id.*, citing LBP-08-13, slip op. at 225.

In support of its Request, the State asserts that "[a]pproximately one-third of the population of Connecticut is located within 50 miles of Indian Point," and "large portions of the State [are located] 50 miles from Indian Point." *Id.* at 4. The State further asserts that it has a "direct and cognizable interest in participating in this proceeding as an interested government body" with respect to six admitted contentions herein, as follows:

1. New York State ("NYS") Contention 12 (decontamination costs considered in severe accident mitigation alternatives ("SAMAs"));
2. NYS Contention 16 (SAMA air dispersion model);
3. NYS Contention 24 (enhanced inspection of containment structures "based on water/cement ratios");
4. NYS Contention 26 (effects of aging due to metal fatigue);
5. Riverkeeper EC-3 (environmental impacts of spent fuel pool leaks); and
6. Clearwater Contention EC-3 (environmental justice).

Request at 3-4. Further, the State designates its representative in this proceeding as Robert D. Snook, Assistant Attorney General in Connecticut's Office of the Attorney General. *Id.* at 3.

The State's Request appears to satisfy the requirements of 10 C.F.R. § 2.315(c). Further, the Licensing Board has previously indicated that Connecticut "may" participate in this proceeding as an interested State under 10 C.F.R. § 2.315(c), LBP-08-13, slip op. at 147, and that Connecticut has "the option" to participate in this proceeding as an interested State

¹ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC __ (July 31, 2008), slip op. at 146-52 (denying Connecticut's petition to intervene upon finding that Connecticut's two proposed contentions were inadmissible).

pursuant to 10 C.F.R. § 2.315(c). *Id.* at 224-25. However, while Connecticut's Request appears to satisfy the requirements of 10 C.F.R. § 2.315(c), Connecticut's Request appears to be untimely, in that the Board's ruling on petitions to intervene established a deadline for filing petitions to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.315(c). Thus, the Licensing Board, in its ruling on petitions to intervene, noted that it had previously afforded the City of New York and the Village of Buchanan an opportunity to file petitions to participate under 10 C.F.R. § 2.315(c), by filing such a petition "within 30 days after any contention was admitted in this proceeding"; and the Board "remind[ed] these two local governmental entities of that opportunity to participate, and . . . of the deadline that we set for the submission of section 2.315(c) Petitions." *Id.* at 225 (emphasis added).²

Under the 30-day deadline established by the Board, it thus appears that any request to participate as an interested governmental entity should have been filed by September 2, 2008, *i.e.*, 30 days after the date of issuance of LBP-08-13 (adjusted for the Labor Day holiday weekend). Connecticut's request, filed on September 25, 2008, thus appears to be untimely. Further, although the Board specifically "remind[ed]" two other entities (the City of New York and the Village of Buchanan) of that 30-day deadline, the Board cited this deadline in the same paragraph that it informed Connecticut that it could file a petition to participate under § 2.315(c), thereby putting Connecticut on notice of that deadline. Moreover, Connecticut was aware of the Board's discussion of this deadline, as the State specifically cites the portion of the Board's decision in which that deadline was established. See Request at 2 (citing pages 225-228 of

² Such a deadline has been imposed in other proceedings, as well. See, *e.g.*, *Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 344-45 (2008) (30 days after issuance of ruling on contentions); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131; 209 (20 days after ruling on contentions).

LBP-08-13). Connecticut fails to explain why it did not or could not file its request within the deadline established by the Board – nor is it reasonable to assume that this deadline applied only to the City of New York and the Village of Buchanan, as there is no reason why the Board should have imposed a filing deadline for some governmental entities, but not others (such as the State of Connecticut). Thus, Connecticut’s filing appears to be untimely without good cause.

Notwithstanding the lateness of its filing, however, the Staff does not oppose the State’s request to participate as an interested governmental entity under 10 C.F.R. § 2.315(c). In this regard, the Staff notes that under 10 C.F.R. § 2.315(c), the Commission has instructed that “[t]he presiding officer will afford an interested State . . . a reasonable opportunity to participate in a hearing.”³ Here, the lateness of the State’s filing does not appear likely to cause delay or confusion in the proceeding, given the very early stage of this adjudication. Further, given the State’s proximity to the Indian Point facility and its expressed interest in participating in this proceeding, the Staff does not oppose its participation herein under 10 C.F.R. § 2.315(c). Accordingly, despite the State’s delay in filing its Request, the Staff does not object to the State’s filing on grounds of timeliness.

Further, the Staff notes that if Connecticut is permitted to participate in this proceeding under § 2.315(c), it must comply with the requirements of the Commission’s Rules of Practice in 10 C.F.R. Part 2 and all existing and future Orders that may be issued by the Licensing Board and the Commission governing the conduct of this proceeding. Thus, while interested governmental entities are to be afforded a “reasonable opportunity” to participate in NRC adjudicatory proceedings, the provision of such a “reasonable opportunity” to participate would not include authorization for an interested governmental entity to disregard binding adjudicatory

³ See *also* Section 274(l) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2021(l).

requirements in the proceeding. Similarly, if Connecticut is permitted to participate as an interested governmental entity in this proceeding, its participation would necessarily be limited to the scope of the contentions listed in its Request, as admitted by the Board;⁴ Connecticut may not expand the scope of those admitted contentions or introduce issues which were not admitted by the Board in its ruling on the contentions' admissibility, having failed to raise such issues in an admissible petition to intervene of its own.⁵

CONCLUSION

For the reasons set forth above, the Staff does not oppose the State of Connecticut's request for leave to participate in this proceeding as an interested governmental entity under 10 C.F.R. § 2.315(c), limited to the scope of the six identified contentions as admitted by the Board, and subject to the State's compliance with the Commission's Rules of Practice in 10 C.F.R. Part 2 and all existing and future rulings by the Licensing Board and the Commission in this proceeding.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of October 2008

⁴ See, e.g., *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413;454-57 (2002) (issues raised by an interested governmental entity are limited to the issues raised in admitted contentions).

⁵ See generally, "Entergy's Response to the State of Connecticut's Request to Participate as an Interested Governmental Body," dated October 2, 2008, at 2-4. The Staff has not attempted to compare the Board's ruling on the admissibility of the six contentions with Connecticut's description of those contentions, and the Staff therefore expresses no view with respect to the Applicant's comparative analysis of the State's Request and the contentions' admitted scope.

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CERTIFICATE OF SERVICE

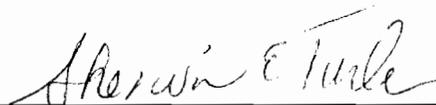
I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO THE STATE OF CONNECTICUT'S REQUEST TO PARTICIPATE AS AN INTERESTED GOVERNMENTAL BODY," dated October 3, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 3rd day of October, 2008:

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