

October 3, 2008 (8:30am)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

Docket Nos. 50-247-LR and
50-286-LR

ENTERGY NUCLEAR OPERATIONS, INC.)

(Indian Point Nuclear Generating Units 2 and 3))

October 2, 2008

**ENTERGY'S RESPONSE TO THE STATE OF CONNECTICUT'S
REQUEST TO PARTICIPATE AS AN INTERESTED GOVERNMENTAL BODY**

On September 25, 2008, the State of Connecticut ("Connecticut" or "the State") filed a request to participate in this proceeding as an interested governmental body pursuant to 10 C.F.R. § 2.315(c).¹ Connecticut asserts therein that it should be recognized as an interested State because large portions of Connecticut, including approximately one-third of the State's population, are located within 50 miles of Indian Point.² Connecticut seeks to participate in this proceeding and any associated hearings with respect to the following environmental and safety contentions: NYS-12 (SAMA analyses do not accurately reflect decontamination and cleanup costs), NYS-16 (SAMA analyses do not accurately estimate population doses), NYS-24 (adequacy of aging management plan for containment in view of water-cement ratios), NYS-26/Riverkeeper TC-1 (adequacy of aging management plan for metal fatigue), Riverkeeper EC-3/Clearwater EC-1 (analysis of environmental impacts of spent fuel pool leaks), and Clearwater EC-3 (adequacy of environmental justice analysis).³

Entergy herein responds to Connecticut's Request. Entergy does not oppose Connecticut's request to participate as an interested State pursuant to 10 C.F.R. § 2.315(c), as discussed below.

¹ 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 (Sept, 25, 2008) ("Request"). Connecticut has identified Assistant Attorney General Robert D. Snook as its designated representative. Request at 3.

² *Id.* at 4-5.

³ *Id.* at 3-6.

DISCUSSION

In its July 31 Order, the Board, in reminding the Village of Buchanan and the City of New York of the opportunity to participate as interested governmental bodies, advised those entities that “within 30 days after any contention was admitted in this proceeding each could petition to participate pursuant to 10 C.F.R. § 2.315(c).”⁴ Arguably, the Board’s July 31 Order could be read to impose a 30-day deadline for the submission of Section 2.315(c) petitions on *all* interested governmental bodies, including the State of Connecticut. Indeed, the Town of Cortlandt, which filed its request to participate pursuant to Section 2.315(c) on August 20, 2008, construed the Board’s July 31 Order to impose such a deadline.⁵ Accordingly, by way of background, if the Board intended to impose a 30-day deadline for all Section 2.315(c) petitions, then Connecticut’s Request would not be timely.

More importantly, however, an interested governmental body’s participation in this proceeding is limited in scope to those matters already placed in controversy by the admitted parties (New York, Riverkeeper, and Clearwater)—*i.e.*, the intervenors’ admitted contentions.⁶ Moreover, interested governmental bodies are subject to the same procedural requirements and constraints that apply to the parties.⁷ Therefore, an intervenor, and *a fortiori* an interested State, “may not freely

⁴ *Entergy Nuclear Operations Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC ___, slip op. at 225 (July 31, 2008) (“LBP-08-13” or “July 31 Order”).

⁵ Town of Cortlandt’s Request for Participation by a Person Not a Party (Aug. 20, 2008) at 2. Cortlandt stated: “In its Order, the Board stated that § 2.315(c) Petitions must be submitted within thirty (30) days after the admission of any contention.” *Id.* The City of New York filed its request to participate as an interested governmental body on August 27, 2008, which also was within the 30-day period prescribed by the Board in its July 31 Order. *See* Request of the City of New York for an Opportunity to Participate as an Interested Government Body in Proceeding and Hearing on Indian Point Units 2 and 3 (Aug. 27, 2008).

⁶ *See Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 457 (2002), *requests for Commission referral and Board reconsideration denied*, LBP-02-25, 56 NRC 467 (2002), *aff’d in part on other grounds*, CLI-03-1, 57 NRC 1 (2003), *petition for review denied*, CLI-03-12, 58 NRC 185 (2003) (stating that interested governmental bodies may provide input “on any contentions that are admitted for litigation in [a] proceeding,” and “[f]or any new issues these interested governmental entities wish to raise on their own, however, they must satisfy the standards for contentions set forth in section [2.309(f)]”); *see also Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-81-5, 13 NRC 226, 246-47 (1981) (same).

⁷ *See, e.g., Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), LBP-90-12, 31 NRC 427, 430-31 (1990), *aff’d in part on other grounds*, ALAB-934, 32 NRC 1 (1990); *see also* NRC Staff’s Response to Town of Cortlandt’s Request

“change the focus of an admitted contention at will as litigation progresses, but is bound by the terms of the contention.”⁸

Entergy raises this issue because Connecticut’s Request suggests that the State wishes to litigate issues that clearly fall outside the scope of this proceeding, as defined by the admitted contentions. For example, with respect to Contention NYS-12, Connecticut states that, “to the extent that decontamination costs are underestimated, this would directly impact analysis of environmental and social impacts from an accident or *attack*.”⁹ As this Board ruled, however, the potential environmental impacts of intentional attacks on the Indian Point facility are beyond the scope of this proceeding.¹⁰

Similarly, with respect to Consolidated Contention Riverkeeper EC-3/Clearwater EC-1, Connecticut states that “[a] *fire or other release of radioactive materials* at the spent fuel pool could materially impact the citizens of the State.”¹¹ The admitted contention, however, does not concern the impacts of fires or other accidents at the spent fuel pools, which have been addressed generically by the NRC and thus are outside the scope of this individual license renewal adjudication.¹² Rather, Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 concerns only Entergy’s assessment of the significance of information related to the potential environmental impacts of spent fuel pool leaks

for Participation by a Person Not a Party (Sept. 2, 2008) (stating that interested governmental entities are “subject to the requirements of the 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”).

⁸ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002) (quoting *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 42 (1993)) (other citations omitted); *see also Louisiana Energy Servs., L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 627 n. 37 (noting that “an intervenor would not have free license to put additional matters into controversy, or to conduct repetitious questioning”).

⁹ Request at 4 (emphasis added).

¹⁰ *See, e.g.,* LBP-08-13, slip op. at 120 (quoting *AmerGen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129 (2007), *petition for judicial review pending*, No. 07-2271 (3d Cir.)) (stating the Board is “bound by the Commission’s ruling in *Oyster Creek* ‘that NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities.’”).

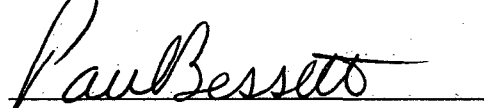
¹¹ Request at 5 (emphasis added).

¹² *See* 10 C.F.R. §§ 51.23; 51.95(c)(2); 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; *see also* LBP-08-13, slip op. at 148-49, 180-81 (rejecting proposed Connecticut and Riverkeeper contentions regarding spent fuel pool fires and noting that the NRC has chosen to address spent fuel storage impacts generically through rulemaking).

at Indian Point to the site groundwater.¹³

Accordingly, if the Board authorizes Connecticut to participate in this proceeding as an interested State pursuant to 10 C.F.R. 2.315(c), then the Board, respectfully, should limit Connecticut's participation to the admitted scope of the contentions on which the State seeks to participate.

Respectfully submitted,



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Dated at Washington, DC
this 2nd day of October, 2008

¹³ See LBP-08-13, slip op. at 184-92.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Lawrence G. McDade, Chair
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop

In the Matter of)	Docket Nos. 50-247-LR and 50-286-LR
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ENTERGY NUCLEAR OPERATIONS, INC.)	ASLBP No. 07-858-03-LR-BD01
)	
(Indian Point Nuclear Generating Units 2 and 3))	
)	October 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy's Response to the State of Connecticut's Request to Participate as an Interested Governmental Body," dated October 2, 2008, were served this 2nd day of October, 2008 upon the persons listed below, by first class mail and e-mail as shown below.

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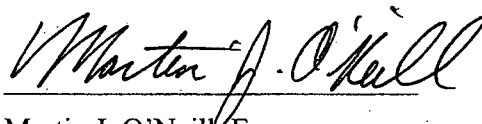
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A handwritten signature in black ink, reading "Martin J. O'Neill". The signature is written in a cursive style with a horizontal line underneath the name.

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