

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Dale E. Klein, Chairman
Gregory B. Jaczko
Peter B. Lyons
Kristine L. Svinicki

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

CLI-08-27

MEMORANDUM AND ORDER

This proceeding concerns the application of Entergy Nuclear Operations, Inc. (Entergy) to renew the licenses for Indian Point Nuclear Generating Units 2 and 3. Before us is an appeal, filed jointly by Nancy Burton and Connecticut Residents Opposed to Relicensing of Indian Point (collectively, CRORIP).¹ CRORIP appeals two companion decisions of the Atomic Safety and Licensing Board in this matter: first, the Board's denial of a petition filed by CRORIP pursuant to 10 C.F.R. § 2.335; and second, the Board's denial of CRORIP's petition to intervene and request for hearing.² We deny CRORIP's appeal.

¹ *Notice of Appeal* (Aug. 11, 2008)(CRORIP Appeal). Both the NRC staff and Entergy filed answers opposing the CRORIP Appeal. *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)"* (Aug. 21, 2008); *Entergy Nuclear Operations, Inc. Answer Opposing Appeal of Connecticut Residents Opposed to Relicensing of Indian Point* (Aug. 21, 2008).

² *Order (Denying CRORIP's 10 C.F.R. § 2.335 Petition)*(unpublished)(July 31, 2008)(Waiver Order); LBP-08-13, 68 NRC __ (July 31, 2008), slip op. at 3, 5, 221-24. The Board held that, while CRORIP established standing, its sole proposed contention fell outside the scope of the license renewal proceeding and was therefore inadmissible.

As a general matter, a board ruling denying a waiver request is interlocutory in nature, and therefore not appealable until the board has issued a final decision resolving the case.³ Here, however, the Board's denial of CRORIP's waiver request is inextricably intertwined with its decision, in LBP-08-13, to wholly deny CRORIP's intervention petition – a decision which CRORIP may appeal immediately.⁴ Pursuant to Section 2.335, CRORIP sought a waiver of NRC regulations adopting NUREG-1437, the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (May 1996) (GEIS), with regard to, first, the exclusion from site-specific analysis of occupational and public radiation exposures during the license renewal term,⁵ and second, the NRC's use of the “Reference Man” dose models to calculate permissible levels of radiation exposure.⁶ CRORIP's single proposed contention, in turn, argued that Entergy's license renewal application did not adequately account for the health risks to local populations from the cumulative effects of radiation exposure from routine and accidental releases of radiation from the plant⁷ – in effect, challenging the same rules that CRORIP sought to waive in its Section 2.335 petition.

³ *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-95-7, 41 NRC 383, 384 (1995). Section 2.335 (formerly 10 C.F.R. § 2.758) itself provides for immediate certification to the Commission *only* when the board finds a *prima facie* case in favor of a waiver. *Id.*; 10 C.F.R. § 2.335(d).

⁴ 10 C.F.R. § 2.311. See LBP-08-13, 68 NRC ___, slip op. at 229 (noting that the Board's decision is subject to appeal in accordance with Section 2.311).

⁵ Waiver Order, slip op. at 4-6. See *Connecticut Residents Opposed to Relicensing of Indian Point and its Designated Representative's 10 C.F.R. § 2.335 Petition* (Dec. 10, 2007) (Waiver Petition), at 6-7.

⁶ Waiver Order, slip op. at 6-7. See Waiver Petition at 1,7. See generally 10 C.F.R. §§ 51.95(c); 51.53(c)(3)(i); 10 C.F.R. Part 51, Subpt. A, App. B, Table B-1.

⁷ LBP-08-13, 68 NRC ___, slip op. at 222-23, citing *Connecticut Residents Opposed to Relicensing of Indian Point and its Designated Representative's Petition to Intervene and Request for Hearing* (Dec. 11, 2007), at 4-5.

When considering whether to undertake “pendent” appellate review of otherwise non-appealable issues, the Commission, in the interest of efficiency and looking to analogous rulings by federal appeals courts, has expressed a willingness to take up otherwise unappealable issues that are “inextricably intertwined” with appealable issues.⁸ We believe that the CRORIP Appeal presents an appropriate occasion to exercise pendent jurisdiction. The two decisions are so closely related that, in order to decide the immediately appealable challenge to the Board’s decision in LBP-08-13, we must necessarily consider the validity of the Board’s Waiver Order. We find that CRORIP’s challenges to both decisions are appropriately considered simultaneously.⁹

We further find the Board’s decisions regarding CRORIP’s waiver request and intervention petition to be comprehensive and well-reasoned. The CRORIP Appeal fails to demonstrate that either of the Board’s rulings was in error. For the reasons the Board has given, we therefore *deny* the CRORIP Appeal and *affirm* the Waiver Order and the Board’s denial of CRORIP’s intervention petition in LBP-08-13.

IT IS SO ORDERED.

For the Commission

(NRC SEAL)

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of November, 2008.

⁸ See *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 19-20 (2001) (declining to exercise pendent jurisdiction where (among other things) the challenged “interlocutory” issues were not “inextricably intertwined” with the two immediately appealable issues), citing *Gilda Marx, Inc. v. Wildwood Exercise, Inc.*, 85 F.3d 675, 679 (D.C. Cir. 1996).

⁹ See *Gilda Marx*, 85 F.3d at 679.

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Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-08-27) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-247-LR and 50-286-LR
COMMISSION MEMORANDUM AND ORDER (CLI-08-27)

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Docket Nos. 50-247-LR and 50-286-LR
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Docket Nos. 50-247-LR and 50-286-LR
 COMMISSION MEMORANDUM AND ORDER (CLI-08-27)

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[Original signed by Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
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