

RAS E-304

November 20, 2009 (3:00pm)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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))	November 20, 2009
)	

TOWN OF CORTLANDT'S ANSWER TO HUDSON RIVER SLOOP CLEARWATER, INC.'S PETITION PRESENTING SUPPLEMENTAL CONTENTIONS EC-7 AND SC-1 CONCERNING STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE AT INDIAN POINT

Preliminary Statement

The Town of Cortlandt ("Cortlandt") respectfully submits this answer in response to and in support of Hudson River Sloop Clearwater, Inc.'s ("Clearwater") Petition to add two new contentions concerning the storage of high-level radioactive waste at Indian Point Nuclear Generating Units 2 and 3 ("Indian Point"), pursuant to 10 C.F.R. § 2.309(h). Cortlandt's residents live in close and surrounding proximity to the Indian Point facility, and it is therefore understandable that its citizens have a heightened concern that Indian Point is "safe." Of utmost concern are the health of its residents and the safety of the surrounding environment.

The storage and disposal of nuclear waste in spent fuel pools is a significant issue, and one that poses serious health and environmental concerns that require analysis under the National Environmental Policy Act ("NEPA"). See 42 U.S.C. §§ 4331 et seq. As raised by Clearwater's two new contentions, the recent votes and official statements by the Commissioners of the Nuclear Regulatory Commission ("NRC") make clear that spent fuel waste will remain at nuclear facilities for the foreseeable and indefinite future. Ongoing and unmonitored leaks of radioactive effluents leaking from Indian Point's spent fuel pools into the groundwater and

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Hudson River will likely continue, and be compounded, as a result of spent fuel waste remaining on-site for an indefinite period of time. Such impacts were not analyzed in Entergy's or the NRC Staff's environmental analyses.

Argument

I. The Board Should Grant Clearwater's Petition for Admission of New Contentions Regarding the Storage of High-Level Radioactive Waste at Indian Point

Clearwater's contentions state that:

- (1) The environmental analysis carried out to assess the potential impacts of relicensing Indian Point Units 2 and 3 is inadequate because it provided an insufficient analysis of the potential impacts of additional waste storage on site, the alternative methods of accomplishing such storage, and potential alternatives to additional waste storage on the site, including the no-action alternative.
- (2) The license renewal application requesting the relicensing of Indian Point Units 2 and 3 is inadequate because it provides insufficient analysis of the aging management of the dry casks and spent fuel pools that could be used to store waste on the site in the long term. In addition, both the applicant and the NRC Staff have failed to establish that any combination of such storage will provide adequate protection of safety over the long term.

Clearwater Petition, at 15 (Oct. 26, 2009, amended Nov. 6, 2009). Clearwater based its new contentions on the September 2009 votes by the Commissioners of the Nuclear Regulatory Commission ("NRC"),¹ which were part of a rulemaking proceeding commenced on October 9, 2008 and in response to a NRC Staff proposal contained in SECY-09-0090. See SECY-09-0090, Final Update of the Commission's Waste Confidence Decision (June 15, 2009) ML091660274 ("SECY-09-0090"). Two of the three Commissioners officially stated that they are unable to determine when off-site storage will be available for spent fuel waste currently stored on-site at nuclear facilities. These statements counter the Waste Confidence Rule, which states that there

¹ See Notation Vote, Response Sheets of Chairman Jaczko, Commissioner Klein, and Commissioner Svinicki (publicly released Sept. 25 and 28, 2009), available at <http://www.nrc.gov/reading-rm.doc-collections/commission/cvr/2009/>.

will be a reliable and safe and permanent off-site disposal facility to accept spent nuclear waste by 2025. See 10 C.F.R. § 51.23; 73 Fed. Reg. 59,551 (Oct. 9, 2008) (Waste Confidence Decision Update); 73 Fed. Reg. 59,547 (Oct. 9, 2008) (Temporary Storage Rule).

II. Clearwater's Contentions are Admissible under 10 C.F.R. § 2.309

Clearwater has provided a sufficient basis for its new contentions. Specifically, because the Commission is unable to determine when off-site storage will be available for facilities' waste, a new or supplemental environmental analysis must be conducted by NRC. NRC has relied on the Waste Confidence Rule to avoid analyzing the impacts of waste stored in spent fuel pools in an applicant's Environmental Report and in the NRC Staff's Supplemental Environmental Impact Statement ("EIS"), pursuant to NEPA.² Under this rule, NRC presumed that nuclear waste could be safely stored for an additional thirty years after the plant was decommissioned. This presumption was based on a permanent waste repository being available by 2025. However, Yucca Mountain, the proposed geologic repository for spent fuel waste, will not be opened and no such repository will be available by 2025. This information was not previously available when Clearwater, or any of the other parties or interested persons, filed their original Petitions to Intervene in 2007.

² See 10 C.F.R. § 51.23:

(a) The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations. Further, the Commission believes there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of any reactor to dispose of the commercial high-level waste and spent fuel originating in such reactor and generated up to that time.

(b) Accordingly . . . no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license or amendment, reactor combined license or amendment, or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment, or other analysis prepared in connection with the issuance or amendment of an operating license for a nuclear power reactor

The Commissioners now accept the proposition that a permanent waste repository will not be available by 2025. Commissioner Svinicki stated that she believes “that such disposal capacity will be provided by the federal government at a future time” but further information and public comment are needed to “best be informed” about the future of the federal disposal program. (Svinicki Comments on SECY-09-0090.) Commissioner Klein’s comments also demonstrate that NRC cannot make a reasonable assurance that an off-site waste repository will be available in the near, or definite, future. (See Klein Comments on SECY-09-0090.) This information was not previously available, and resolution of this issue will likely require a reevaluation of the safety and environmental issues associated with storing spent fuel at Indian Point beyond the thirty year period after the facility ceases operations. As such, a supplemental EIS, as contended by Clearwater, must be prepared. (See Clearwater Petition, at 32.)

Clearwater’s new contentions are timely and raise material disputes. Clearwater submitted its petition upon new, previously unavailable information within thirty days of the availability of the new information, the Commissioners’ Notation Votes and Response Sheets. See 10 C.F.R. § 2.309(f)(2). Additionally, neither NRC Staff nor Entergy will likely agree that the above information is new and/or significant. As such, and as stated further in Clearwater’s Petition, the factual and legal disputes raised will need to be resolved through a hearing. See Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 N.R.C. 111, 118 (1995) (“only a ‘minimal showing’ that material facts are in dispute” is required at the contention admission stage).

Conclusion

For the reasons set forth above, Cortlandt respectfully requests that the Board admit Clearwater's proposed new contentions.

On Behalf of Linda D. Puglisi, Supervisor of the Town of Cortlandt, and the Town of Cortlandt

Dated:

November 20, 2009
New York, New York

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2009 a true copy of the foregoing TOWN OF CORTLANDT'S ANSWER TO HUDSON RIVER SLOOP CLEARWATER, INC.'S PETITION PRESENTING SUPPLEMENTAL CONTENTIONS EC-7 AND SC-1 CONCERNING STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE AT INDIAN POINT, was served by electronic mail and by first class mail upon the following parties and participants:

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