RAS E-472

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	)	
	)	March 3, 2011

HUDSON RIVER SLOOP CLEARWATER, INC.'S REQUEST FOR EXTENSION OF TIME AND ANSWER IN SUPPORT OF NEW YORK STATE'S ANALYSIS OF ALTERNATIVES CONTENTION

Pursuant to 10 C.F.R. 2.309(h)(1), Hudson River Sloop Clearwater, Inc. ("Clearwater" or "Petitioners") hereby answers the State of New York's February 3, 2011 Contention Concerning NRC Staff's Final Supplemental Environmental Impact Statement. Because this Answer is three days past the deadline to file answers, Petitioners also respectfully submit a Request for Extension of Time. We recognize that this Request is filed belatedly pursuant to the Board's Scheduling Order of July 1, 2010 and that, as such, the Board is under no legal obligation to consider our Answer if it rejects our Request for Extension of Time; however, we belatedly file because we feel the information contained herein will be useful to the board in this proceeding, and that the Board would want to be as fully informed as possible before making a decision of such import in this proceeding. Further, its submission will not prejudice the other parties, who have not yet filed their answers because they received a week's time extension. Common sense and fairness dictate that the Board consider this request, especially considering that Clearwater did not oppose the granting of a time extension to the other parties.

TEMPLATE = SECY 043

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Background: On February 3, 2011, the State of New York ("NYS") submitted contention 37 based on the Final Supplemental Environmental Impact Statement ("FSEIS") issued by the Staff of the Nuclear Regulatory Commission ("Staff") on December 3, 2001.[1] This contention updates NYS's previously submitted contentions 9 and 33, which respectively assert that Entergy's Environmental Report ("ER") and the Staff's Draft Supplemental Environmental Impact Statement ("DSEIS") failed to give meaningful consideration to non-fossil fuel alternatives to license renewal. Petitioners here file a statement supporting NYS contention 37.

Discussion: To support its contention regarding the inadequacy of the analysis of alternatives, New York only had to document that the FSEIS in this case did not use scientific techniques to reach objective conclusions. *See Environmental Defense Fund, Inc., v. Corps of Engineers*, 348 F.Supp. 916, 933 (5th Cir. 1972) (stating the EIS must "contain enough scientific reasoning to alert specialists to particular problems within the field of their expertise"); *In the Matter of General Public Utilities Nuclear Corporation*, 28 N.R.C. 178, 188 (1988) ("NEPA states that an EIS must provide a detailed thoughtful analysis from adequate data so that a reviewing body can decide on an objective basis.") (internal citation omitted). However, New York has gone much further than that. It has shown first that the structure of NRC EIS's has been from the outset systematically biased in favor of concluding that nuclear power plants have least environmental impacts. NY Contention at 8-10. Then it has shown that the analysis of alternatives in the FSEIS completely fails to take account of developments in the power markets and in renewable technology. *Id.* at 8-15. Thus, the FSEIS is fundamentally flawed and wholly inadequate.

To support its analysis of alternatives contention New York has gone far beyond what is required to have a contention admitted. To support the first part of its contention, it has produced as

[1] "State of New York Contention Concerning NRC Staff's Final Supplemental Environmental Impact Statement" (February 3, 2011) ("NYS Contention").

an expert witness a former Commissioner who had studies done showing the bias in NRC EIS's during his term at the NRC. NYS Contention, Att. 6 (Decl. of Peter Bradford). Sadly his efforts to reform NRC's approach to the EIS process did not bear fruit. For the second part, it has produced a witness with a deep understanding of how New York's energy market actually works. NYS Contention, Att. 4 (Decl. of David A. Schlissel). Based on this witness's declaration, the EIS sections quoted by New York are so divorced from reality, it appears that the author of the EIS had little or no understanding of how power is supplied and paid for in New York. Indeed, reasonable questions could be asked about whether those passages were merely cut and pasted from an EIS about a power plant in a region that still has the traditional utility approach to electricity supply.

In this regard, Clearwater would like to correct a major misunderstanding that Entergy has reinforced through its publicity. Although Indian Point is a low-cost power producer because the initial cost of building it has been largely amortized or subsidized by New Yorkers through the Con Ed rate base, Entergy does not sell the electricity produced at Indian Point at low cost to New Yorkers. Instead, like other merchant power producers, Entergy seeks the highest stable return by supplying power through a combination of long-term contracts and open market sales. Through this approach Entergy has been making profits of the order of $500M per year at Indian Point. Thus, far from using the inherent cost advantages of a fully depreciated nuclear plant to benefit New Yorkers, Entergy has been using it to enrich its executives and shareholders.

Some may believe there is nothing wrong with a large corporation making large amounts of money at a single facility while some of its customers are struggling to pay their electric bills. However, everyone should be able to agree that trying to convince those customers and community organizations in urban neighborhoods into believing that Entergy is supplying them with affordable electricity and saving their children from asthma is far from model behavior. As shown by New York, instead of taking an objective approach to the analysis of alternatives and exposing Entergy's

false claims about the effect of closing Indian Point, the NRC has reinforced those claims. In turn, this endorsement has enabled Entergy to continue its campaign of false and misleading public relations. At root, this campaign is designed to deceive the poor into supporting a massive wealth transfer from New York's electricity customers into the coffers of Entergy Corporation in Louisiana.

New York's alternatives contention and Clearwater's environmental justice contention are really two sides to the same coin. They both show that the FSEIS has systematically played down the impacts of extending the life of the plant without any improvements to the cooling system while exaggerating the adverse impacts of alternates to life extension and the installation of an improved cooling system. This is symptomatic of an analysis that was driven from the start by the desire to reach the conclusion that life extension is the preferred alternative.

Scientists are well aware that objective analysis is impossible when the result of the analysis is pre-ordained. This Board should send a clear message to the NRC Staff that it is time that environmental impact statements reflected objective science, rather than agency bias. Thereafter, the Board should be satisfied with nothing less than a careful objective analysis of the environmental impacts of license renewal and its alternatives. Only in this manner can the legal mandate of NEPA be satisfied. *See* 42 U.S.C. § 4332(2)(c)(iii) (requiring analysis of alternatives in EISs); *see also* 40 C.F.R. § 1502.24 (requiring that agencies ensure "the professional integrity, including scientific integrity" analyses in EISs). Perhaps even more importantly, only an objective analysis can educate New Yorkers and the agency itself about the pros and cons of license renewal. Hopefully, the time has passed when the federal government allows itself to be complicit in a deliberate campaign to deceive vulnerable populations.

For the foregoing reasons, the Board should admit both New York's alternatives contention and Clearwater's expanded environmental justice contention.

Request for Extension of Time: In support of its Request for an Extension of Time, Petitioners state as follows:

1. On December 3, 2010, the Staff of the NRC ("Staff") issued its Final Supplemental Environmental Impact Statement ("FSEIS") in this proceeding.[2] On December 27, 2010, the Atomic Safety and Licensing Board ("Board") granted a motion filed by Petitioners, Riverkeeper, Inc. ("Riverkeeper"), and the State of New York ("NYS" or "New York") seeking a 30-day extension of time to file new or amended contentions based on any new and material information that first became available in the FSEIS.[3]

2. Pursuant to the Board's Order, NYS, Clearwater, and Riverkeeper filed their new and/or amended contentions on February 3, 2011. Among these filings was New York's contention 37, which asserts that the FSEIS failed to meaningfully consider non-fossil fuel alternatives to license renewal.

3. Pursuant to the Board's Scheduling Order of July 1, 2010, and 10 C.F.R. 2.309(h)(1), answers to amended and/or new contentions are due to be filed within twenty-five (25) days of the filing of the contentions. Here, answers were originally due February 28, 2011.

4. On February 23, 2011, the NRC Staff filed a Request for an Extension of Time for the Staff's and Entergy's Answers to FSEIS Contentions, to permit such answers to be filed one week later, on March 7, 2011. This request was unopposed. On February 25, 2011, the Board granted the request, giving the Staff and Entergy until March 7, 2011 to file their answers.[4]

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[2] "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3" (Dec. 2010) ("FSEIS").
[3] "Order (Granting Intervenor's Unopposed Joint Motion for an Extension of Time)" (Dec. 27, 2010).
[4] "Order (Granting Time Extension)" (February 25, 2011).

5. On February 18, 2011, Entergy and NRC Staff answered Clearwater and Riverkeeper's new contentions regarding the Waste Confidence Rule.[5] Accordingly, pursuant to the Scheduling Order and 10 C.F.R. 2.309(h)(2), Clearwater and Riverkeeper's replies to these answers were due on February 25, 2011.

6. On February 25, 2011, Clearwater and Riverkeeper filed a joint reply to Entergy and the Staff's answers.[6] Clearwater spent a substantial amount of time preparing this Combined Reply in response to answers on the waste confidence contention in accordance with the schedule. As such, Clearwater did not have adequate time to prepare an answer to New York's contention 37 to meet the February 28 deadline.

7. Additionally, Clearwater has limited resources, and the two persons entered to appear in this case, Manna Jo Greene and Ross Gould, have been engaged with other commitments and omitted to request the NRC Staff to include Clearwater in the extension request the Staff filed. Specifically, Manna Jo Greene, Clearwater's Environmental Director, has substantial responsibilities at the organization that did not allow her to spend time on this answer before February 25. Ross Gould, Esq., a member of Clearwater's Board of Directors, was engaged in time-consuming projects at his full-time job that did not allow him to spent adequate time on this answer before February 25.

8. Given the temporary unavailability of Clearwater's legal team due to its focus on the timely filing of the Combined Reply by February 25, as well as the outside commitments heretofore described, Clearwater has not been able to timely file its answer to New York's contention 37, and hereby belatedly requests an extension of time until Thursday, March 3, 2011. It should be noted

[5] "Applicant's Answer to Hudson River Sloop Clearwater, Inc. and Riverkeeper, Inc.'s New Contentions Concerning the Waste Confidence Rule" (February 18, 2011) ("Entergy Answer"); "NRC Staff's Answer to Hudson River Sloop Clearwater, Inc. and Riverkeeper, Inc.'s Joint Motion and Petition to Add New Contentions" (February 18, 2011) ("Staff Answer").

[6] "Combined Reply to NRC Staff and Entergy's Answers in Opposition to Clearwater and Riverkeeper's Joint Motion for Leave and Petition to Add New Contentions" (February 25, 2011) ("Combined Reply").

that none of the other parties to this proceeding have yet answered New York's contention 37. Therefore, while technically late, the lateness has not prejudiced any of the parties.

9. Clearwater has contacted Counsel for Entergy, Counsel for the NRC Staff, Counsel for New York, and Counsel for Riverkeeper. The NRC Staff objects to the filing of this request because it is untimely. As of the time of this filing, Counsel for Entergy had not yet told petitioners whether they object. Counsel for New York and Counsel for Riverkeeper have authorized Clearwater to state that they do not object to Clearwater's belated request for an extension of time, until today, Thursday, March 3, 2011, to file its answer to New York's new and/or amended FSEIS contentions.

10. Despite the Staff's objection and that we have thus far been unable to get Entergy's final decision, Petitioners submit this request now to avoid prejudicing the other parties by further delay.

WHEREFORE, Petitioners respectfully request that Clearwater be afforded an extension of time, until March 3, 2011, in which to file their answer to New York's contention 37.

Respectfully submitted,

Manna Jo Greene

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/s/

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March 3, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	March 3, 2011

CERTIFICATE OF SERVICE

Prior to filing the enclosed "HUDSON RIVER SLOOP CLEARWATER, INC.'S REQUEST FOR EXTENSION OF TIME AND ANSWER IN SUPPORT OF NEW YORK STATE'S ANALYSIS OF ALTERNATIVES CONTENTION" I certify that on March 3, 2011 petitioners consulted in good faith with Nuclear Regulatory Commission (NRC) Staff and with Entergy Staff.

Petitioners certify that on March 3, 2011 copies of the enclosed "HUDSON RIVER SLOOP CLEARWATER, INC.'S REQUEST FOR EXTENSION OF TIME AND ANSWER IN SUPPORT OF NEW YORK STATE'S ANALYSIS OF ALTERNATIVES CONTENTION" were served on the following by first-class mail and e-mail:

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March 3, 2011