

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

In the Matter of
ENTERGY NUCLEAR OPERATIONS, INC.
(Indian Point Nuclear Generating Units 2 and 3)

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

ASLBP No. 07-858-03-LR-BD01

June 7, 2011

AMENDED SCHEDULING ORDER

On June 6, 2011, the Board held a prehearing conference via telephone to discuss with the parties and interested governmental entities the possible implications of the NRC Staff's May 26, 2011 letter to the Board that addressed, inter alia, Requests for Additional Information (RAIs) and the responses thereto that were submitted by the Applicant, Entergy Nuclear Operations, Inc. (Entergy), on March 28, 2011, as well as imminent RAIs and the expected responses to them.¹

This Amended Scheduling Order incorporates our discussion at that teleconference and amends our July 1, 2010 Scheduling Order and all our other Orders governing the schedule in this proceeding. Unless expressly altered in this Amended Scheduling Order, all directives from our prior Orders remain.

I. Evidentiary Hearing Filings, New or Amended Contentions, and Dispositive Motions

The NRC Staff's May 26, 2011 letter alerted the Board and the other participants to this proceeding that the NRC Staff recently issued the above-mentioned RAIs and received the Applicant's responses; that the NRC Staff planned to issue more RAIs; that the NRC Staff planned to issue a

¹ See Tr. at 955-86.

Supplement to its Safety Evaluation Report (SER) in late July or early August 2011²; and that “[t]he SER Supplement is expected to address a number of issues that are the subject of admitted contentions in this proceeding”³ Prior to the NRC Staff’s May 26, 2011 letter, intervenors’ initial written statements of position, written testimony with supporting affidavits, and exhibits on all admitted contentions in this proceeding would have been due in mid-to-late June.

To avoid submission of staggered filings and to promote judicial economy, we hereby hold in abeyance the submission of all intervenors’ initial written statements of position, written testimony with supporting affidavits, and exhibits until after the NRC Staff issues its SER Supplement. We also reaffirm our decision not to bifurcate the evidentiary hearing in this proceeding between safety and environmental contentions.⁴

In addition, to further promote judicial economy and pursuant to the objectives of 10 C.F.R. § 2.332(c)(3)-(4), we direct that new or amended contentions arising from new information contained in the responses to RAIs referenced in the NRC Staff’s May 26, 2011 letter (i.e., those submitted on March 28, 2011 or to be submitted by Entergy prior to the publication of the NRC Staff’s SER Supplement) or which arise from new information contained in the SER Supplement, shall be filed no later than thirty (30) days after the SER Supplement is issued.⁵

We direct this unified filing of new or amended contentions in order to avoid repeated filings, or modifications to those filings, as new information emerges within a very limited time period during which the parties are also preparing their initial written statements of position, written testimony with supporting

² During the June 6, 2011 teleconference, the NRC Staff estimated that the SER Supplement would be issued on August 19, 2011. See id. at 960.

³ Letter from Sherwin S. Turk, Counsel for NRC Staff, to Atomic Safety and Licensing Board at 1 (May 26, 2011).

⁴ See Licensing Board Scheduling Order (July 1, 2010) at para. J (unpublished).

⁵ Such potential new or amended contentions shall be filed pursuant to our instructions in Paragraphs F and G of the Board’s July 1, 2010 Scheduling Order.

affidavits, and exhibits. Accordingly, if such new or amended contentions are filed in accordance with this Amended Scheduling Order, they will be viewed as timely pursuant to 10 C.F.R. § 2.309(f)(2)(iii).

Any motions for summary disposition arising from the SER Supplement shall also be filed within thirty (30) days of the submission of the SER Supplement; such motions and answers thereto shall be filed in accordance with our July 1, 2010 Scheduling Order.⁶

If new or amended contentions or motions for summary disposition are filed, then intervenors' initial written statements of position, written testimony with supporting affidavits, and exhibits filed pursuant to 10 C.F.R. § 2.1207 shall be submitted no later than thirty (30) days after the last timely reply or answer to new or amended contentions or motions for summary disposition is filed. Alternatively, if no new or amended contentions or motions for summary disposition are filed as a result of the SER Supplement, then intervenors' initial written statements of position, written testimony with supporting affidavits, and exhibits filed pursuant to 10 C.F.R. § 2.1207 shall be submitted no later than forty (40) days after the SER Supplement is issued. Under either scenario, all other evidentiary hearing filings shall proceed in accordance with Paragraph K of our July 1, 2010 Scheduling Order.

II. Electronic Information Exchange

This proceeding may only be transferred to the NRC's Electronic Information Exchange (EIE) upon the agreement of all participants and the Board, and we declined to do so on an earlier occasion because we had not received the assent of all participants.⁷ Nevertheless, as the deadline for the submission of direct testimony in this proceeding approaches, given the number of admitted contentions

⁶ See id. at para. H.1-3. The ultimate deadline for dispositive motions established in Paragraph H.4 of our July 1, 2010 Scheduling Order still applies, except for those motions for summary disposition that might appropriately be triggered by the NRC Staff's forthcoming SER Supplement.

⁷ See Licensing Board Order (Declining to Transfer the Proceeding to the NRC's Electronic Filing System) (Feb. 9, 2009) at 1-2 (unpublished); cf. Use of Electronic Submissions in Agency Hearings, 72 Fed. Reg. 49,139, 49,144 (Aug. 28, 2007). On that occasion, representatives from Westchester County, New York City, and the Village of Buchanan had not responded to our entreaty on this subject and thus we were unable to effectuate such a transfer. Id. at 2. We encourage these three participants to take part in discussions on this issue with the other participants in this proceeding.

we recognize the potential benefits to the parties from our transferring this proceeding to the EIE. We also recognize the potential benefits of continuing under our existing procedures.

Accordingly, at the June 6, 2011 prehearing teleconference, we asked all participants in this proceeding to discuss the possible transfer of filings in this proceeding to the NRC's EIE. Further, we directed the NRC Staff to advise the Board regarding the result of those discussions no later than July 6, 2011.⁸

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁹

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 7, 2011

⁸ See Tr. at 974-77.

⁹ Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy Nuclear Operations, Inc.; (3) Counsel for the State of New York; (4) Counsel for Riverkeeper, Inc.; (5) Manna Jo Green, the Representative for Clearwater; (6) Counsel for the State of Connecticut; (7) Counsel for Westchester County; (8) Counsel for the Town of Cortlandt; (9) Mayor Sean Murray, the Representative for the Village of Buchanan; and (10) Michael J. Delaney, counsel for the City of New York.

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NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR
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(Indian Point Nuclear Generating Station,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing AMENDED SCHEDULING ORDER has been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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AMENDED SCHEDULING ORDER

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of June 2011