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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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.)		ASLBP No. 07-858-03-LR-BD01	
)			
(Indian Point Nuclear Generating Units 2 and 3))			
)		July 18, 2011	

**APPLICANT'S MOTION FOR CLARIFICATION OF LICENSING BOARD
ADMISSIBILITY RULINGS ON CONTENTIONS NYS-17B AND NYS-37**

Pursuant to 10 C.F.R. § 2.323(a), Entergy Nuclear Operations, Inc. ("Entergy") respectfully requests clarification of the Atomic Safety and Licensing Board's ("Board") July 6, 2011 Order, in which the Board admitted certain amended and new contentions proffered by New York State ("NYS").¹ Specifically, Entergy seeks clarification of certain statements made by the Board in its admissibility rulings on Consolidated NYS-17B and Consolidated NYS-37.²

I. LEGAL STANDARD

The purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend.³ Thus, in contrast to a motion for reconsideration, a clarification request does not seek reexamination of the record for the purpose of substantively modifying a decision. In NRC adjudications, a party may seek clarification of a ruling on the scope of an admitted contention.⁴

¹ Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) (unpublished) ("July 6, 2011 Board Order").

² In accordance with 10 C.F.R. § 2.323(b), counsel for Entergy certifies that he made a sincere effort to contact the other parties in this proceeding on July 14, 2011, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues, and he certifies that his efforts have been unsuccessful. NYS stated that it is not opposed to Entergy seeking clarification of the Board's ruling on the subject contentions, but noted its procedural right to file a response to the motion if so compelled. The NRC Staff stated that it does not oppose the motion for clarification.

³ See *United States v. Philip Morris USA, Inc.*, No. No. 99-2496, 2011 WL 2469733, at *2 (D.D.C. June 22, 2011) (quoting *Resolution Trust Corp. v. KPMG Peat Marwick*, No. 92-1373, 1993 WL 211555, at *2 (E.D.Pa. June 8, 1993)).

⁴ See, e.g., *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 374-384, 388 (2002) (addressing the applicant's request that the Commission clarify its intent, as set forth in a prior Commission order (CLI-02-17), regarding the scope of an admitted contention, and holding that "CLI-02-17 did not broaden or in any respect redefine the scope of the Intervenor's original contention").

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II. REQUESTS FOR CLARIFICATION

A. Consolidated NYS-17B

On January 24, 2011, NYS filed amended contention NYS-17B,⁵ in which it asserted that the bases for its previously-admitted contention NYS-17/17A should apply as well to the NRC Staff's Final Supplemental Environmental Impact Statement ("FSEIS") for the Indian Point Units 2 and 3 ("IP2" and "IP3") license renewal application ("LRA").⁶ NYS also asserted that 10 C.F.R. § 51.23(b) should not bar consideration of the environmental impacts of spent fuel storage at Indian Point in this proceeding.⁷

The Board admitted NYS-17B to the extent it applies the bases of NYS-17/17A to the FSEIS instead of the DSEIS.⁸ The Board, however, rejected NYS's argument that its proffered new bases are site-specific and exempt from 10 C.F.R. § 51.23(b).⁹ It stated that because the Commission has specifically barred consideration of the environmental impacts of long-term storage of spent fuel in adjudicatory proceedings, this aspect of NYS-17B is inadmissible.¹⁰ Specifically, the Board held that "[t]o argue that the presence of spent fuel itself on the site affects property values is to assert that there is an environmental impact from the presence of spent fuel that must be assessed on a site-specific basis, contradicting the language of the Waste Confidence Rule, 10 C.F.R. § 51.23(b)."¹¹ In the next paragraph, however, the Board included an apparently contradictory statement that the negative effect on property values postulated by NYS associated with the longer-term presence of spent fuel "is *not* an environmental impact barred by the Waste Confidence Rule."¹² The Board further stated that the

⁵ See State of New York Motion for Leave to File Timely Amended Bases to Contention 17A (Now to Be Designated Contention 17B) (Jan. 24, 2011) ("Amended Bases Motion"); State of New York Contention 17B (Jan. 24, 2011) ("Contention 17B").

⁶ See Amended Bases Motion at 2-5.

⁷ See *id.* at 3-4.

⁸ July 6, 2011 Board Order at 16.

⁹ *Id.* at 17.

¹⁰ *Id.* at 18.

¹¹ *Id.* at 17.

¹² *Id.* at 18 (emphasis added).

potential for spent fuel to indefinitely stay on-site is not an environmental impact associated with the spent fuel itself; instead, it is the occupation of the site by “components of IPEC” that has the potential to bring down property values if license renewal is granted.¹³ Accordingly, the Board appears to have drawn a distinction between the long-term presence on site of spent fuel and other plant components.

Entergy respectfully submits that the statements made on page 18 of the July 6, 2011 Board Order cited above might be misconstrued to permit inquiry into the environmental impacts attributable to the long-term presence or storage of spent fuel.¹⁴ Entergy does not believe this to be the intent of the Board’s ruling given the Board’s explicit recognition in the instant decision and in several prior rulings by this Board and the Commission that contentions relating to the environmental impacts of long-term spent fuel storage are categorically barred by the Waste Confidence Rule.¹⁵ Nevertheless, to avoid any potential confusion, Entergy seeks confirmation that the Board’s reference to “occupation of the site by *components* of IPEC . . . if license renewal is granted” on page 18 of the July 6, 2011 Board Order does not include consideration of environmental impacts of long-term on-site spent fuel storage.

B. Consolidated NYS-37

NYS-37 relates to the FSEIS discussion of energy alternatives. The Board admitted NYS-37 in part, but only to the extent it updated and superseded NYS-9/33 and challenged the adequacy of the FSEIS responses to public comments on the DSEIS concerning the environmental impacts of the no-action alternative.¹⁶ The Board stated that it was not authorizing a broad-ranged inquiry into alternative scenarios and the need for power, because such an inquiry is precluded by NRC regulations and prior

¹³ *Id.*

¹⁴ Entergy is referring, in particular, to the first full paragraph on page 18 of the July 6, 2011 Board Order, the first sentence of which states: “Nevertheless, the negative effect on property values predicted by Dr. Sheppard that would result from the longer-term presence of spent fuel anticipated by the updated Waste Confidence Rule is not an environmental impact barred by the Waste Confidence Rule.”

¹⁵ *See, e.g.*, July 6, 2011 Board Order at 17-18; Licensing Board Memorandum and Order (Denying Entergy’s Motion for the Summary Disposition of NYS Contention 17/17A) at 13 (Apr. 22, 2010) (unpublished) (agreeing with Entergy that NEPA “contentions relating to on-site spent fuel storage are outside the scope of this proceeding due to the Waste Confidence Rule (codified as 10 C.F.R. § 51.23)”).

¹⁶ July 6, 2011 Board Order at 34.

Board rulings in this proceeding.¹⁷ In associated footnote 156, the Board also found that “New York’s concerns about the FSEIS’s analysis of *certain non-fossil alternatives* untimely, given that these issues go beyond those raised by New York in its contentions on the DSEIS and New York could have raised them earlier.”¹⁸

It is not clear to Entergy which of New York’s “concerns” about the FSEIS’s analysis of “certain non-fossil alternatives” the Board has excluded as untimely. Therefore, Entergy seeks clarification of the meaning and intent of footnote 156 of the July 6, 2011 Board Order to avoid any confusion about the proper scope of Consolidated NYS-37.

III. CONCLUSION

Entergy respectfully requests that the Board clarify the scope of Consolidated NYS-17B and Consolidated NYS-37 to address the issues discussed above.

Respectfully submitted,

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COUNSEL FOR ENTERGY NUCLEAR
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Dated in Washington, D.C.
this 18th day of July 2011

¹⁷ *Id.* at 35 (citing 10 C.F.R. § 51.95(c)(2); Order (Ruling on New York State’s New and Amended Contentions) at 11-13 (June 16, 2009); *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 92-93 (2008)).

¹⁸ *Id.* n.156 (emphasis added).

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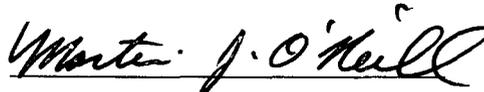
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