

RAS E-556

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

-----x  
In re: Docket Nos. 50-247-LR; 50-286-LR  
License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01  
Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64  
Entergy Nuclear Indian Point 3, LLC, and July 26, 2011  
Entergy Nuclear Operations, Inc.  
-----x

STATE OF NEW YORK'S  
RESPONSE TO APPLICANT'S MOTION FOR CLARIFICATION  
OF LICENSING BOARD ADMISSIBILITY RULINGS ON  
CONTENTIONS NYS-17B AND NYS-37

Office of the Attorney General  
for the State of New York  
The Capitol  
State Street  
Albany, New York 12224

TEMPLATE = SECY 036

DS 03

## INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(b), the State of New York urges the Board to deny Entergy's motion for "clarification," which is nothing more than an unsupported motion for reconsideration and, in any event, premature.

## DISCUSSION

With regard to Contention 17B, although styled a motion for "clarification," Entergy is really seeking reconsideration of the Board's ruling, which is sufficiently clear and requires no clarification. The Board ruled that "[b]ecause 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." Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) (unpublished) (Order) at 18. Immediately thereafter the Board also ruled that "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." *Id.* at 18. There is nothing contradictory, apparently or otherwise, in these statements. Entergy simply disapproves of the Board's ruling. The Board should reject Entergy's attempt to characterize its request for reconsideration as a motion for clarification.

A motion to reconsider may be made only with leave of the Board or the Commission and "upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid." 10 C.F.R. § 2.323(e). *Accord Entergy Nuclear Generation Company and Entergy*

*Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station) CLI-10-28 (November 5, 2010) at 1 & n.2. Entergy has not satisfied, nor could it, the standard for reconsideration.

With regard to its efforts at “clarification” of the ruling on both Contentions 17B and 37, Entergy’s motion is not only unnecessary but premature. In addition to seeking clarification of the ruling on 17B, Entergy seeks “clarification” of a footnote in the Board’s Order related to certain concerns regarding non-fossil fuel alternatives that the Board found untimely. Order at 35 & n. 156. Entergy will not know until New York files its direct testimony regarding Contentions 17B and 37 whether New York has misunderstood the Board’s ruling and strayed into subjects that Entergy believes are precluded. As Entergy itself stated in opposing an intervenor’s interlocutory request for clarification in another proceeding, “[c]ertainly, the Board should not be forced to offer speculative advice on these matters in advance of the development of the record.” *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station) ASLBP No. 06-848-02-LR, Entergy’s Opposition to Pilgrim Watch’s Interlocutory Motion Seeking Further Clarification (October 4, 2010) at 10, ML102850137. When New York files its direct testimony regarding Contentions 17B and 37, Entergy may file an *in limine* motion to preclude any portions of New York’s testimony that Entergy believes are not within the scope of the Board’s Order. Until such time, Entergy has no need for “clarification.” The State seeks no further guidance and plans to file its direct testimony in full compliance with the Board’s unambiguous rulings.

## CONCLUSION

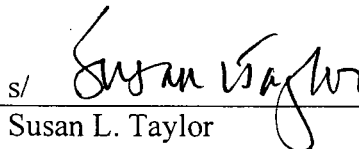
Based on the foregoing the State of New York urges the Board to deny the motion for "clarification."

Respectfully submitted,



---

John J. Sipos  
Assistant Attorney General  
Office of the Attorney General  
The Capitol  
Albany, New York 12224  
(518) 402-2251  
john.sipos@ag.ny.gov



---

Susan L. Taylor  
Assistant Attorney General  
Office of the Attorney General  
The Capitol  
Albany, New York 12224  
(518) 474-2432  
susan.taylor@ag.ny.gov

July 26, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD**

-----X  
In re: Docket Nos. 50-247-LR and 50-286-LR  
  
License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01  
  
Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64  
Entergy Nuclear Indian Point 3, LLC, and  
Entergy Nuclear Operations, Inc. July 26, 2011  
-----X

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2011, copies of the State of New York's Response to Applicant's Motion for Clarification of Licensing Board Admissibility Rulings on Contentions NYS-17B and NYS-37, were served upon the following persons via U.S. Mail and e-mail at the following addresses:

Lawrence G. McDade, Chair  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mailstop 3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738  
Lawrence.McDade@nrc.gov

Richard E. Wardwell  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mailstop 3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738  
Richard.Wardwell@nrc.gov

Kaye D. Lathrop  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
190 Cedar Lane E.  
Ridgway, CO 81432  
Kaye.Lathrop@nrc.gov

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mailstop 3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

Josh Kirstein, Esq., Law Clerk  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mailstop 3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738  
Josh.Kirstein@nrc.gov

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Mailstop 16 G4  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738  
ocaamail@nrc.gov

Office of the Secretary  
Attn: Rulemaking and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mailstop 3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738  
hearingdocket@nrc.gov

Sherwin E. Turk, Esq.  
David E. Roth, Esq.  
Andrea Z. Jones, Esq.  
Beth N. Mizuno, Esq.  
Brian G. Harris, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mailstop 15 D21  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738  
sherwin.turk@nrc.gov  
andrea.jones@nrc.gov  
david.roth@nrc.gov  
beth.mizuno@nrc.gov  
brian.harris@nrc.gov

Kathryn M. Sutton, Esq.  
Paul M. Bessette, Esq.  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
ksutton@morganlewis.com  
pbessette@morganlewis.com

Martin J. O'Neill, Esq.  
Morgan, Lewis & Bockius LLP  
Suite 4000  
1000 Louisiana Street  
Houston, TX 77002  
martin.o'neill@morganlewis.com

Elise N. Zoli, Esq.  
Goodwin Procter, LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
ezoli@goodwinprocter.com

William C. Dennis, Esq.  
Assistant General Counsel  
Entergy Nuclear Operations, Inc.  
440 Hamilton Avenue  
White Plains, NY 10601  
wdennis@entergy.com

Robert D. Snook, Esq.  
Assistant Attorney General  
Office of the Attorney General  
State of Connecticut  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120  
robert.snook@ct.gov

Melissa-Jean Rotini, Esq.  
Assistant County Attorney  
Office of the Westchester County Attorney  
Michaelian Office Building  
148 Martine Avenue, 6th Floor  
White Plains, NY 10601  
MJR1@westchestergov.com

Daniel E. O'Neill, Mayor  
James Seirmarco, M.S.  
Village of Buchanan  
Municipal Building  
236 Tate Avenue  
Buchanan, NY 10511-1298  
vob@bestweb.net

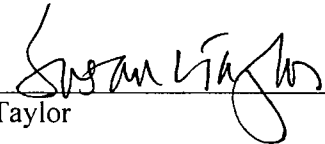
Daniel Riesel, Esq.  
Thomas F. Wood, Esq.  
Victoria Shiah, Esq.  
Sive, Paget & Riesel, P.C.  
460 Park Avenue  
New York, NY 10022  
driesel@sprlaw.com  
vshiah@sprlaw.com

Michael J. Delaney, Esq.  
Director  
Energy Regulatory Affairs  
NYC Department of Environmental  
Protection  
59-17 Junction Boulevard  
Flushing, NY 11373  
(718) 595-3982  
mdelaney@dep.nyc.gov

Manna Jo Greene, Director  
Stephen Filler, Esq., Board Member  
Hudson River Sloop Clearwater, Inc.  
724 Wolcott Avenue  
Beacon, NY 12508  
Mannajo@clearwater.org  
stephenfiller@gmail.com

Phillip Musegaas, Esq.  
Deborah Brancato, Esq.  
Riverkeeper, Inc.  
20 Secor Road  
Ossining, NY 10562  
phillip@riverkeeper.org  
dbrancato@riverkeeper.org

s/



---

Susan L. Taylor

Dated at Albany, New York  
this 26th day of July 2011