

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

October 18, 2011

ORDER

(Clarification of Procedures for Evidentiary Filings)

The State of New York (New York) has moved unopposed for clarification of our October 7, 2011 Order regarding the procedures for evidentiary filings.<sup>1</sup>

Our July 1, 2010 Scheduling Order provides that the evidentiary filings of the intervenors, the Applicant, the NRC Staff, and interested governmental entities who have been authorized to participate in this proceeding pursuant to 10 C.F.R. § 2.315(c) be structured contention-by-contention.<sup>2</sup> Our October 7, 2011 Order directs that

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<sup>1</sup> State of New York's Motion for Clarification (Board's October 7, 2011 Order (Procedures for Evidentiary Filings)) (Oct. 17, 2011) [hereinafter New York Motion].

<sup>2</sup> Licensing Board Scheduling Order (July 1, 2010) at 13-15 (unpublished). For example,

[T]he intervenors shall file their initial written statement of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence supports a factual or legal position). The written testimony shall be under oath or by an affidavit so that it is suitable for direct receipt into evidence, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or rely upon for their statements or position. If

Each participant's evidentiary submission shall begin with an exhibit list containing four columns: the exhibit's number, the contention(s) addressed by the exhibit, the exhibit's name (including date of creation, if useful), and the exhibit's submission date. That exhibit list will constitute each respective participant's first exhibit. Each participant's second exhibit will consist of its statement of position and the third exhibit will be the pre-filed testimony (which, at the participant's option, may be broken into more than one exhibit). This will be followed in numerical order by each of the exhibits supporting that testimony.<sup>3</sup>

New York asserts that our October 7, 2011 Order "could be read as anticipating one single omnibus submission from each party commencing with a single exhibit list followed by one combined statement of position for all contentions, to be followed by testimony on all contentions, to be followed by exhibits on all contentions" or that, in the alternative, that Order could be interpreted as leaving our July 1, 2010 Scheduling Order's contention-by-contention regime in place.<sup>4</sup> New York requests that we leave our July 1, 2010 regime undisturbed.<sup>5</sup>

Our October 7, 2011 Order should not be interpreted as departing from our July 1, 2010 Scheduling Order's contention-by-contention scheme. Rather, our October 7, 2011 Order only instructs the participants in identifying and numbering their exhibits. Participants' filings for each contention and each consolidated contention shall entail a separate statement of position and separate testimony, and those documents may be submitted in separate files. Each party shall submit only one exhibit list per round of evidentiary filings, and that exhibit list shall be arranged contention-by-contention. After the filings for the first contention are included in a participant's exhibit list, that same exhibit list shall continue contention-by-contention in the same format, with

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such documents are not attached, the Board will not consider them for any purpose in making findings of fact. Such submissions shall be made on a contention-by-contention basis.

Id. at 13-14.

<sup>3</sup> Licensing Board Order (Procedures for Evidentiary Filings) (Oct. 7, 2011) at 1-2 (unpublished).

<sup>4</sup> New York Motion at 1-2.

<sup>5</sup> Id. at 2.

the statement of position and direct testimony for each successive contention followed directly by any newly identified exhibits referenced therein.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>6</sup>

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
October 18, 2011

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<sup>6</sup> Copies of this Order were sent this date by the agency's E-Filing system to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (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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(Indian Point Nuclear Generating Station, )  
Units 2 and 3) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Clarification of Procedures for Evidentiary Filings) have been served upon the following persons by Electronic Information Exchange.

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

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of October 2011