

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Michael F. Kennedy
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, 2012

ORDER

(Ordering the NRC Staff to Address Board Questions)

On June 1, 2012, the NRC Staff filed its Fourth Status Report (the Report) which, inter alia, updated the Board on its ongoing safety and environmental reviews.¹ Regarding the NRC Staff's safety review, the Report stated that "[t]he Staff had previously estimated that it will issue a Supplement to the Safety Evaluation Report ("SER") to address the Applicant's Reactor Vessel Internals Aging Management Program and Inspection Plan in August 2012. The NRC Staff notes that the estimated date for issuance of the SER Supplement could change, depending upon the substance and completeness of the Applicant's answers to the Staff's RAIs."² Although this ongoing review impacts Contention NYS-25 and the related portion of NYS-38/RK-TC-5, currently being held in abeyance,³ the NRC Staff also noted that this review

¹ NRC Staff's Fourth Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (June 1, 2012) [hereinafter June 1, 2012 Staff Update].

² Id. at 2.

³ Id.

“*should* not affect the litigation of any other portion of Contention NYS-38/RK-TC-5 or any other admitted contention.”⁴

The Report also addressed the NRC Staff’s ongoing NEPA review. On May 17, 2012, the NRC Staff contacted the Board stating that, though they were reinitiating consultations with National Marine Fisheries Services (NMFS), they did “not expect this development to affect the issuance of the Draft Supplement to the Staff’s Final Supplemental Environmental Impact Statement [FEIS]”⁵ forecasted for May 31, 2012. Just two weeks later, the NRC Staff informed the Board that, though it missed the May 31 deadline, it now expects to publish the Draft FEIS Supplement on or before July 6, 2012, even though the NRC Staff does not expect to conclude consultations with NMFS until August 14, 2012, and does not expect to receive NMFS’s Biological Opinion until September 28, 2012.⁶ The NRC Staff stated that it does not “*expect* that its issuance of the Draft FEIS Supplement will affect the litigation of any admitted contention in this proceeding, other than Riverkeeper Contention EC-8 (Endangered Species).”⁷

In light of the NRC Staff’s most recent Status Report, the Board has become increasingly concerned that the Staff’s review will not be finalized prior to the anticipated October hearing dates, a prospect that seemed unlikely until the latest timelines summarized above were revealed.

Section 2.332(d) states that “[h]earings on safety issues may be commenced before a publication of the NRC staff’s safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding.”⁸ However, “hearings on

⁴ Id. at 2, n.5 (emphasis added).

⁵ Letter from Sherwin E. Turk, Counsel for the NRC Staff, to the ASLB Licensing Board (May 17, 2012).

⁶ June 1, 2012 Staff Update at 2-3.

⁷ Id. at 3.

⁸ 10 C.F.R. § 2.332(d).

environmental issues addressed in the EIS may not commence before the issuance of the final EIS.”⁹ The Commission confirmed the lack of options licensing boards have to alter this regulation in CLI-07-17, emphasizing that a “Board lacks discretion to proceed to hearing on an accelerated basis on environmental issues because . . . [the Staff’s] work on environmental issues requires compliance with the public participation and public comment processes of NEPA and associated regulations.”¹⁰ Separately, the Commission has found that the Staff Supplements (i.e., the Supplemental FEIS and the Supplemental SER) prevented the documents from being viewed as “finalized” and prevented the licensing board proceeding to evidentiary hearing on environmental issues.¹¹

In light of the foregoing, the Board directs the NRC Staff to respond to the following questions:

- 1) Why does the NRC Staff intend to publish the Draft Supplemental FEIS and make the document available for public comment in July 2012, when consultations with NMFS will not be completed until August 14, 2012 and a Biological Opinion will not be released until September 28, 2012?
- 2) How confident is the NRC Staff that it “expects” the Draft Supplemental FEIS will not impact contentions other than Riverkeeper Contention EC-8? At what point will the NRC Staff be able to answer with certainty that there will be no impacts on other admitted contentions? Specifically explain any uncertainties regarding the scope of the Draft Supplemental FEIS and the process for the resolution of those uncertainties.

⁹ Id.

¹⁰ S. Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), CLI-07-17, 65 NRC 392, 395 (2007).

¹¹ Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 214 (2001).

- 3) In light of the fact that Entergy RAI answers are not expected until June 14, 2012, by when will the NRC Staff review those answers and determine whether the SER Supplement will be issued in August 2012?
- 4) How confident is the NRC Staff that the SER Supplement “should not affect” any other contention except the known portions of NYS-38/RK-TC-5 and NYS-25? At what point will the NRC Staff be able to answer with certainty that no other contentions will be impacted?
- 5) In light of 10 C.F.R. § 2.332(d), CLI-01-20, and CLI-07-17, is the Board obligated to suspend current proceedings on environmental issues until the NRC Staff has completed its environmental review and issued the FEIS Supplement or, in the NRC Staff’s view, may we proceed to hearing at this time on all environmental contentions except Riverkeeper EC-8 and why?
- 6) In light of 10 C.F.R. § 2.332(d) and CLI-07-17, and the recent delays, does the NRC Staff believe that moving forward on safety issues is “not adversely impacting the staff’s ability to complete its reviews in a timely manner?”¹²

¹² 10 C.F.R. § 2.332(d).

- 7) If 10 C.F.R. § 2.332(d), CLI-01-20, and CLI-07-17 require the Board to suspend proceedings at this point, in light of the fact that this proceeding began in 2007 and that we are now on the critical path to the evidentiary hearing, by when will the NRC Staff definitively finalize its environmental and safety reviews?

NRC Staff responses to the above questions are due, in the form of a brief, by June 18, 2012. Responses to or comments on any NRC Staff answer may be submitted to the Board by any party on or before June 28, 2012.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 7, 2012

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Ordering the NRC Staff to Address Board Questions)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-7H4M
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

Sherwin E. Turk, Esq.
Edward L. Williamson, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian Harris, Esq.
Mary B. Spencer, Esq.
Anita Ghosh, Esq.
Karl Farrar, Esq.
Brian Newell, Paralegal
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
E-mail:

Lawrence G. McDade, Chair
Administrative Judge
E-mail: lawrence.mcdade@nrc.gov

sherwin.turk@nrc.gov
edward.williamson@nrc.gov
beth.mizuno@nrc.gov
brian.harris.@nrc.gov
david.roth@nrc.gov
mary.spencer@nrc.gov
anita.ghosh@nrc.gov
karl.farrar@nrc.gov
brian.newell@nrc.gov

Richard E. Wardwell
Administrative Judge
E-mail: richard.wardwell@nrc.gov

Kaye D. Lathrop
Administrative Judge
190 Cedar Lane E.
Ridgway, CO 81432
E-mail: kaye.lathrop@nrc.gov

Anne Siarnacki, Law Clerk
E-mail: anne.siarnacki@nrc.gov
Shelbie Lewman, Law Clerk
E-mail: shelbie.lewman@nrc.gov

OGC Mail Center
OGCMailCenter@nrc.gov

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

Thomas F. Wood, Esq.
Daniel Riesel, Esq.
Victoria Shiah Treanor, Esq.
Adam Stolorow, Esq.
Jwala Gandhi, Paralegal
Peng Deng, Paralegal
Counsel for Town of Cortlandt
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
E-mail: driesel@sprlaw.com
vtreanor@sprlaw.com
astolorow@sprlaw.com
jgandhi@sprlaw.com
pdeng@sprlaw.com

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

Phillip Musegaas, Esq.
Deborah Brancato, Esq.
Ramona Cearley, Secretary
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
E-mail: phillip@riverkeeper.org
dbrancato@riverkeeper.org
rcearley@riverkeeper.org

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Raphael Kuyler, Esq.
Jonathan M. Rund, Esq.
Lena Michelle Long, Esq.
Laura Swett, Esq.
Lance Escher, Esq.
Mary Freeze, Legal Secretary
Antoinette Walker, Legal Secretary
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: ksutton@morganlewis.com
pbessette@morganlewis.com
martin.o'neill@morganlewis.com
rkuyler@morganlewis.com
jrund@morganlewis.com
llong@morganlewis.com
lswett@morganlewis.com

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan,
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
E-mail: MJR1@westchestergov.com

Manna Jo Greene, Environmental Director
Steven C. Filler
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
E-mail: mannajo@clearwater.org
stephenfiller@gmail.com
karla@clearwater.org

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lescher@morganlewis.com
mfreeze@morganlewis.com
awalker@morganlewis.com

Michael J. Delaney, Esq.
Director, Energy Regulatory Affairs
NYC Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373
E-mail: mdelaney@dep.nyc.gov

John Louis Parker, Esq.
Office of General Counsel, Region 3
New York State Department
of Environmental Conservation
21 South Putt Corners Road
New Paltz, NY 12561-1620
E-mail: jlparker@gw.dec.state.ny.us

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
E-mail: robert.snook@po.state.ct.us

John J. Sipos, Esq.
Charles Donaldson, Esq.
Assistant Attorneys General
Office of the Attorney General
of the State of New York
Elyse Houle, Legal Support
The Capitol
State Street
Albany, New York 12224
E-mail: John.Sipos@ag.ny.gov
charlie.donaldson@ag.ny.gov
elyse.houle@ag.ny.gov

Sean Murray, Mayor
Kevin Hay, Village Administrator
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
E-mail: SMurray@villageofbuchanan.com
Administrator@villageofbuchanan.com

Janice A. Dean, Esq.
Assistant Attorney General
Kathryn Liberatore, Esq.
Office of the Attorney General
of the State of New York
120 Broadway, 26th Floor
New York, New York 10271
E-mail: janice.dean@ag.ny.gov
kathryn.liberatore@ag.ny.gov

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

Dated at Rockville, Maryland
this 7th day of June 2012