

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 8, 2012

NOTICE OF HEARING

(Application for License Renewal)

This proceeding arises out of the April 23, 2007, application of Entergy Nuclear Operations, Inc. (Entergy) to renew its operating licenses for Indian Point Nuclear Generating Units 2 and 3 (Operating License Nos. DPR-26 and DPR-64) at its Indian Point Energy Center in Buchanan, New York. Entergy seeks to extend these licenses for an additional twenty years beyond the current expiration dates of September 9, 2013 (Indian Point Unit 2) and December 12, 2015 (Indian Point Unit 3). On August 1, 2007, the Commission published a notice of opportunity to request a hearing on Entergy's license renewal application.¹ Requests for hearings and petitions to intervene were filed by sixteen entities: the State of New York (New

¹ Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period, 72 Fed. Reg. 42,134 (Aug. 1, 2007). In a subsequent notice, the Commission extended the time for which petitions to intervene in this license renewal proceeding could be timely filed. See Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period: Extension of Time for Filing of Requests for Hearing or Petitions for Leave to Intervene in the License Renewal Proceeding, 72 Fed. Reg. 55,834 (Oct. 1, 2007).

York); the State of Connecticut (Connecticut); Westchester County, New York (Westchester); the Town of Cortlandt, New York (Cortlandt); the Village of Buchanan, New York (Buchanan); the City of New York (New York City); the New York Affordable Reliable Electricity Alliance; Friends United for Sustainable Energy; Hudson River Sloop Clearwater (Clearwater); Connecticut Residents Opposed to Relicensing Indian Point; Westchester Citizen Awareness Network; Rockland County Conservation Association; Sierra Club—Atlantic Chapter; Assemblyman Richard Brodsky; Public Health and Sustainable Energy; and Riverkeeper, Inc. (Riverkeeper). On October 18, 2007, this Atomic Safety and Licensing Board was established to conduct this adjudication.²

On July 31, 2008, this Board issued a memorandum and order in which it (a) granted the hearing requests of three entities: New York, Riverkeeper, and Clearwater; (b) admitted thirteen contentions; and (c) granted interested governmental entity status to Connecticut, Westchester, and the Town of Cortlandt.³ On December 18, 2008, we granted interested governmental entity

² Establishment of Atomic Safety and Licensing Board, 72 Fed. Reg. 60,394 (Oct. 24, 2007). On April 9, 2012, the Board was reconstituted, substituting Judge Michael F. Kennedy for Judge Kaye D. Lathrop. See Entergy Nuclear Operations, Inc., (Indian Point Nuclear Generating Units 2 and 3); Notice of Atomic Safety and Licensing Board Reconstitution, 77 Fed. Reg. 22,361 (Apr. 13, 2012).

³ LBP-08-13, 68 NRC 43, 217-220 (2008). These thirteen contentions, which challenge the sufficiency of Entergy's license renewal application, were: NYS-5 (concerning buried pipes, tanks, and transfer canals), NYS-6/7 (concerning non-environmentally qualified inaccessible medium-voltage and low-voltage cables and wiring), NYS-8 (concerning electrical transformers), NYS-9 (concerning energy conservation in the "no-action" alternative analysis), NYS-12 (concerning decontamination and cleanup costs associated with severe accidents), NYS-16 (concerning underestimation of cleanup costs in light of underestimated population projections in severe accidents), NYS-17 (concerning land values in the no-action alternative to relicensing), NYS-24 (concerning containment structure integrity), NYS-25 (concerning embrittlement of reactor pressure vessels and associated internals), NYS-26A/RK-TC-1A (concerning metal fatigue on key reactor components), RK-TC-2 (concerning flow-accelerated corrosion on reactor components), RK-EC-3/CW-EC-1 (concerning leaks from spent fuel pools), and CW-EC-3 (concerning disproportionate environmental justice impacts on minority, low-income, and disabled populations near Indian Point).

status to New York City and Buchanan.⁴ Since our original order granting hearing requests, we have admitted several new and/or amended contentions filed against Entergy's license renewal application and the NRC Staff's environmental review of that application, and consolidated some of these contentions with pre-existing contentions.⁵ We have also summarily disposed of two contentions in favor of New York⁶ and approved of the settlement of one contention.⁷

The NRC Staff issued its final Safety Evaluation Report (SER) in November 2009⁸ and a first supplemental SER in August 2011.⁹ The NRC Staff issued its draft Supplemental

⁴ See Licensing Board Memorandum and Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) (Granting in Part Riverkeeper's Motion for Clarification and Reconsideration of the Board's Ruling in LBP-08-13 Related to the Admissibility of Riverkeeper Contention EC-2) (Denying Riverkeeper's Request to Admit Amended Contention EC-2 and New Contentions EC-4 and EC-5) (Denying Entergy's Motion for Reconsideration of the Board's Decision to Admit Riverkeeper Contention EC-3 and Clearwater Contention EC-1) (Dec. 18, 2008) at 2 (unpublished).

⁵ These contentions are CW-EC-3A (displacing CW-EC-3), NYS-12C (displacing NYS-12, NYS-12A, and NYS-12B), NYS-16B (displacing NYS-16 and NYS-16A), NYS-17B (displacing NYS-17 and NYS-17A), NYS-26B/RK-TC-1B (displacing NYS-26A/RK-TC-1A), NYS-33 (displacing NYS-9), NYS-35/36 (concerning severe accident mitigation alternatives cost-benefit analyses), NYS-37 (displacing NYS-9 and NYS-33), NYS-38 (concerning reactor vessel aging management plans), and RK-EC-8 (concerning the NRC Staff's Endangered Species Act consultations). See Licensing Board Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) (Nov. 10, 2011) (unpublished); Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) (unpublished); Licensing Board Memorandum and Order (Ruling on Motion for Summary Disposition of NYS-26/26A/Riverkeeper TC-1/1A (Metal Fatigue of Reactor Components) and Motion for Leave to File New Contention NYS-26B/Riverkeeper TC-1B) (Nov. 4, 2010) (unpublished); LBP-10-13, 71 NRC 673 (2010); Licensing Board Order (Ruling on New York State's New and Amended Contentions) (June 16, 2009) (unpublished).

⁶ LBP-11-17, 74 NRC __, __ (slip op. at 16-18) (July 14, 2011), pet. for rev. denied, CLI-11-14, 74 NRC __, __ (slip op.) (Dec. 22, 2011) (disposing of contentions NYS-35/36).

⁷ Licensing Board Order (Approving Settlement of Contention NYS-24) (Jan. 26, 2012) (unpublished).

⁸ Office of Nuclear Reactor Regulation, Safety Evaluation Report, Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket Nos. 50-247 and 50-286, Entergy Nuclear Operations, Inc., NUREG-1930, Vol. 1 (Nov. 2009) (ADAMS Accession No. ML093170451); Office of Nuclear Reactor Regulation, Safety Evaluation Report, Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket Nos. 50-247 and 50-286, Entergy Nuclear Operations, Inc., NUREG-1930, Vol. 2 (Nov. 2009) (ADAMS Accession No. ML093170671).

Environmental Impact Statement (SEIS) in December 2008¹⁰ and its final SEIS in December 2010.¹¹ The NRC Staff has indicated that it intends to issue a second supplemental SER in August 2012 and a second draft SEIS in July 2012, with a final version to follow.¹²

In light of the foregoing, an evidentiary hearing will be conducted in this proceeding pursuant to Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a). Subject to a Board determination regarding any request to employ hearing procedures under 10 C.F.R. Part 2, Subpart G, the evidentiary hearing on all admitted contentions will be governed by the hearing procedures set forth in 10 C.F.R. Part 2, Subpart L, 10 C.F.R. §§ 2.1200 - 2.1213.¹³

Parties to this proceeding (including the NRC Staff) have begun to provide evidentiary submissions in support of or in opposition to the merits of the admitted contentions.¹⁴ The

⁹ United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Safety Evaluation Report, Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Supp. 1, Docket Nos. 50-247 and 50-286, NUREG-1930 (Supp. 1, Aug. 2011) (ADAMS Accession No. ML11242A215).

¹⁰ Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Availability of the Draft Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meeting for the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, 73 Fed. Reg. 80,440 (Dec. 31, 2008).

¹¹ Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report Main Report and Comment Responses, NUREG-1437, Vol. 1 (Supp. 38, Dec. 2010) (ADAMS Accession No. ML103350405); Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report Public Comments, NUREG-1437, Vol. 2 (Supp. 38, Dec. 2010) (ADAMS Accession Nos. ML103350438, ML103360209, and ML103360212); Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report Public Comments Continued, Appendices, NUREG-1437, Vol. 3 (Supp.38, Dec. 2010) (ADAMS Accession No. ML103350442).

¹² See NRC Staff's Fourth Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (June 1, 2012) at 2-3.

¹³ See 10 C.F.R. § 2.310; Licensing Board Scheduling Order (July 1, 2010) at 17 (unpublished).

¹⁴ The Board will announce by order the resumption of the evidentiary submission schedule for contention NYS-25 and the commencement of the evidentiary submission schedule for

Board intends to begin taking oral testimony on October 15, 2012, in Westchester County, New York. We anticipate addressing the admitted contentions in the following order:

1. NYS-12C
2. NYS-16B
3. RK-TC-2
4. NYS-17B
5. NYS-37
6. NYS-5
7. NYS-8
8. NYS-6/7
9. CW-EC-3A
10. RK-EC-3/CW-EC-1¹⁵

We anticipate that the hearing will continue on October 16, 17, 18, 22, 23, and 24. Current plans tentatively call for the hearing to convene again on December 10 and run through December 14 as needed. Due to the proprietary nature of some information discussed in the evidentiary submissions associated with contentions NYS-6/7 and RK-TC-2, the Board may be required to close portions of the oral hearing on those contentions from public viewing.

Despite the NRC Staff's ongoing safety and environmental reviews, and because it has received no objections in light of 10 C.F.R. § 2.332(d) from the participants in this proceeding, the Board has tentatively decided that it is efficient to proceed to the evidentiary hearing before

contention RK-EC-8 and portions of contention NYS-38/RK-TC-5 that relate to NYS-25. The Board will conduct the oral hearing on contentions NYS-25, NYS-26/RK-TC-1B, NYS-38/RK-TC-5, and RK-EC-8 after receiving the evidentiary submissions for each of the contentions. The time and date of subsequent oral hearings will be announced by order of the Board.

¹⁵ The order in which we anticipate hearing contentions is subject to change if the NRC Staff's brief in response to our June 7, 2012 Order warrants such a change. See Licensing Board Order (Ordering the NRC Staff to Address Board Questions) (June 7, 2012) (unpublished).

issuance of the NRC's additional environmental and safety review documents. This decision is based on our understanding that the NRC's recent draft SEIS will not address any issue raised in any contention other than RC-EC-8 and that the second supplemental SER will not address any issue raised in any contention other than NYS-25 and those portions of NYS-38/RK-TC-5 that have previously been defined.¹⁶ As noted above, at footnote 15, we issued an Order on June 7, 2012, seeking input from the parties on these assumptions. The Board will notify the parties if our plans to proceed to hearing in October 2012 on the ten contentions listed above change based on the parties' responses to that order. After the NRC's additional safety and environmental documents have issued, the Board will provide a schedule on how it will hear all remaining contentions.

As provided in 10 C.F.R. § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary by one of the methods prescribed below:

Mail to: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1966)

Email to: hearing.docket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board by one of the methods below:

Mail to: Administrative Judge Lawrence G. McDade
c/o Anne Siarnacki, Law Clerk

¹⁶ See NRC Staff's Third Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (May 1, 2012) at 2.

Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
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Fax to: (301) 415-5599 (verification (301) 415-7550)

Email to: anne.siarnacki@nrc.gov

The deadline for this Board's receipt of written limited appearance statements will be September 15, 2012. This will be the sole method for providing limited appearance statements.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC website at www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail at pdr@nrc.gov.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 8, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR
) and 50-286-LR
(Indian Point Nuclear Generating,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **NOTICE OF HEARING (APPLICATION FOR LICENSE RENEWAL)** have been served upon the following persons by Electronic Information Exchange.

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NOTICE OF HEARING (APPLICATION FOR LICENSE RENEWAL)

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[Original signed by Evangeline S. Ngbea]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 8th day of June 2012