

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 12, 2013

ORDER

(Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)

Before the Board are various motions relating to Contentions NYS-16B, CW-EC-3A, NYS-5, and Coastal Zone Management Act (CZMA) issues. Each motion is addressed in turn.

On May 17, 2013, the State of New York (New York) filed a motion seeking leave to file an additional exhibit and supplemental proposed findings of fact and conclusions of law on Contention NYS-16B.¹ The NRC Staff and Entergy opposed New York's motion.² Additionally, Entergy sought to reply to New York's supplemental proposed findings of fact and conclusions of law and requested that, if New York's motion is granted, NL-13-075 be admitted in its entirety.³ Entergy's requests were opposed by New York.⁴

¹ See State of New York Motion Seeking Leave to File an Additional Exhibit and Supplemental Proposed Findings of Fact and Conclusions of Law on Contention NYS-16B (May 17, 2013).

² See NRC Staff's Opposition to State of New York Motion Seeking Leave to File an Additional Exhibit and Supplemental Proposed Findings of Fact and Conclusions of Law on Contention NYS-16B (May 23, 2013); Entergy's Answer Opposing State of New York Motion Seeking Leave to File an Additional Exhibit and Supplemental Findings of Fact and Conclusions of Law on Contention NYS-16B (May 28, 2013).

³ See Entergy's Answer Opposing State of New York Motion Seeking Leave to File an Additional Exhibit and Supplemental Findings of Fact and Conclusions of Law on Contention NYS-16B (May 28, 2013) at 5 n.21, Attach. 1.

Good cause having been shown,⁵ the Board GRANTS New York's motion and admits exhibit NYS000476. Additionally, if Entergy submits NL-13-075 in its entirety as ENT000608 it will be admitted upon receipt. New York's supplemental proposed findings of fact and conclusions of law and Entergy's reply to New York's supplemental proposed findings of fact and conclusions of law for contention NYS-16B are accepted and incorporated into the record.

On May 17, 2013, Hudson River Sloop Clearwater, Inc. (Clearwater) filed a motion seeking leave to file an additional exhibit and supplemental proposed findings of fact and conclusions of law on Contention CW-EC-3A.⁶ Entergy and the NRC Staff opposed the motion.⁷

The Board DENIES Clearwater's motion. In applying the standard of 10 C.F.R. § 2.337(a), the Board finds that the submitted Statement of Interest by the United States of America is not relevant to the reasonableness of the NRC Staff's environmental justice review of Indian Point, Units 2 and 3.

⁴ See State of New York's Answer to Entergy's Request for Leave to File an Additional Exhibit and Supplemental Proposed Findings of Fact and Conclusions of Law In Response to New York's Supplemental Proposed Findings of Fact and Conclusions of Law on Contention NYS-16B (June 6, 2013).

⁵ State of New York Motion Seeking Leave to File an Additional Exhibit and Supplemental Proposed Findings of Fact and Conclusions of Law on Contention NYS-16B (May 17, 2013) at 5-8.

⁶ See Hudson River Sloop Clearwater, Inc.'s Motion for Leave to File One Additional Exhibit Related to Contention EC-3A (Environmental Justice) (May 17, 2013).

⁷ See Entergy's Answer Opposing Hudson River Sloop Clearwater's Motion for Leave to File One Additional Exhibit Related to Contention EC-3A (Environmental Justice) (May 28, 2013); NRC Staff's Answer in Opposition to "Hudson River Sloop Clearwater, Inc.'s Motion for Leave to File One Additional Exhibit Related to Contention EC-3A (Environmental Justice)" (May 28, 2013).

On June 10, 2013, New York filed a motion for leave to submit four additional exhibits labeled as NYS000477, NYS000478, NYS000479, and NYS000480.⁸ Good cause having been shown,⁹ the Board GRANTS New York's motion and exhibits NYS000477, NYS000478, NYS000479, and NYS000480 are admitted.

On July 30, 2012, Entergy filed a motion for a declaratory order that it has already obtained the required New York State coastal management program consistency review of Indian Point Units 2 and 3 for renewal of the operating licenses.¹⁰ In its motion, Entergy sought to have this Board enter a "declaratory order that the NRC may renew the IP2 and IP3 licenses without requiring a further consistency certification or the State's concurrence therewith because renewal will not cause coastal effects that are 'substantially different' than those that New York has previously reviewed."¹¹ New York, Riverkeeper, Inc. (Riverkeeper), and the NRC Staff opposed Entergy's motion.¹² Additionally, New York cross-moved for a declaratory order under

⁸ See State of New York Motion for Leave to Submit Recently Disclosed Entergy Documents as Additional Exhibits Concerning Contention NYS-5 (June 10, 2013).

⁹ Id. at 1-3.

¹⁰ See Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order that it Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Units 2 And 3 for Renewal of the Operating Licenses (July 30, 2012). Entergy later filed a motion to supplement its July 30, 2012 motion for declaratory order. See Entergy's Motion for Leave to Supplement its Motion For Declaratory Order That it Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Unit 2 and 3 for Renewal of the Operating Licenses (May 20, 2013).

¹¹ Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order that it Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Units 2 And 3 for Renewal of the Operating Licenses (July 30, 2012) at 25.

¹² See State of New York Response to Entergy's Request to the Atomic Safety and Licensing Board for a Declaratory Order Concerning Coastal Zone Management Act Issues and Cross-Motion for Declaratory Order (Apr. 5, 2013); Riverkeeper Answer in Opposition to "Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order that it Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Units 2 and 3 for Renewal of the Operating Licenses" (Apr. 5, 2013); NRC Staff's Answer to Applicant's Motion and Memorandum for Declaratory Order that it Has

Section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), for a declaration that Entergy's license renewal application is subject to federal consistency review under 15 C.F.R. Section 930.51, Subpart D.¹³ The NRC Staff opposed¹⁴ and Riverkeeper supported¹⁵ New York's cross-motion.

Given that no consultation has occurred between the NRC Staff, the New York State Department of State, and Entergy pursuant to 15 C.F.R. § 930.51(e), we conclude that Entergy's and New York's motions are premature. Accordingly, Entergy's and New York's motions are DENIED without prejudice.¹⁶

If these motions are refiled after said consultation, the moving party should state whether compliance with the CZMA is within the scope of any admitted contention and, if so, which contention and how it is within the scope thereof. Further, if compliance with the CZMA is not viewed by a party as within the scope of an admitted contention, they should address whether, and if so how, the Board has the authority to consider the issue.

Additionally, the parties should address the following hypothetical: New York State Department of State concludes that a consistency review is needed and, upon completion of

Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point 2 and 3 For Renewal of the Operating Licenses (Apr. 15, 2013). The NRC Staff argued, among other things, that there is inadequate support for issuance of a declaratory order given that there has been no consultation between the NRC, the New York State Department of State, and Entergy pursuant to 15 C.F.R. § 930.51(e). See id. at 11.

¹³ See State of New York Response to Entergy's Request to the Atomic Safety and Licensing Board for a Declaratory Order Concerning Coastal Zone Management Act Issues and Cross-Motion for Declaratory Order (Apr. 5, 2013).

¹⁴ See NRC Staff's Answer to State of New York's Cross-Motion for Declaratory Order on Coastal Zone Management Act Issues (Apr. 15, 2013).

¹⁵ See Riverkeeper Answer in Support of State of New York Cross-Motion for Declaratory Order Concerning Coastal Zone Management Act Issues (Apr. 15, 2013).

¹⁶ As these cross-motions were denied as premature, this does not constitute a ruling on the merits. Therefore, the Board's denial of Entergy's and New York's motions does not trigger the time for the filing of new contentions. See Licensing Board Order (Granting State of New York Motion for Extension of Time to File New Contentions) (Aug. 31, 2012) at 2–3 (unpublished).

that review, enters a ruling adverse to Entergy. The New York State Department of State ruling is upheld by the United States Secretary of Commerce. Would the NRC be precluded from issuing a renewed license for IP2 and IP3, and how, if at all, a prior ruling by this Board that a consistency review was not needed would impact this situation.

Finally, the parties have 10 days after the publication of the forthcoming FSEIS to inform the Board whether 30 days¹⁷ will be sufficient time to file motions for new and amended contentions.¹⁸

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 12, 2013

¹⁷ Tr. at 3289.

¹⁸ The Board recognizes that the issuance of the FSEIS related to Contention RK-EC-8 will occur during the summer vacation season, which could affect the ability to file new or amended contentions within 30 days.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)** have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland
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