

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

July 9, 2013

ORDER

(Denying Motions for Reconsideration; Granting Entergy's Motion)

On June 12, 2013, the Board issued an order granting the State of New York's (New York) motion to submit four additional exhibits related to Contention NYS-5.¹ Additionally, the Board accepted and incorporated into the record New York's and Entergy Nuclear Operations, Inc.'s (Entergy) supplemental proposed findings of fact and conclusions of law for Contention NYS-16B.² On June 14, 2013, Entergy filed a motion for reconsideration³ regarding the Board's order granting New York's motion to submit additional exhibits related to Contention NYS-5.⁴ Entergy argues that the Board erred by granting New York's motion without allowing Entergy or

¹ See Licensing Board Order (Granting New York's Motions, Denying Clearwater's Motions, and Denying CZMA Motions) (June 12, 2013) (unpublished).

² Id. at 2. Entergy's supplemental proposed findings of fact and conclusions of law for contention NYS-16B were in response to New York's.

³ See Applicant's Motion for Reconsideration of the Board's Decision to Admit Additional New York Exhibits Concerning Contention NYS-5 (June 14, 2013).

⁴ See State of New York Motion for Leave to Submit Recently Disclosed Entergy Documents as Additional Exhibits Concerning Contention NYS-5 (June 10, 2013).

the NRC Staff the opportunity to respond and because New York failed to show good cause for the admission of the admitted exhibits.⁵

On June 21, 2013, the NRC Staff filed a motion for partial reconsideration of the same June 12, 2013 Board order.⁶ Similar to Entergy, the NRC Staff seeks reconsideration because the Board granted New York's June 10, 2013 motion and admitted exhibits related to Contention NYS-5 without allowing the NRC Staff the opportunity to respond.⁷ The NRC Staff requests that it be allowed to file an answer to New York's motion.⁸ Additionally, the NRC Staff requests that it be allowed to file responsive supplemental proposed findings of fact and conclusions of law on Contention NYS-16B.⁹

On July 1, 2013, New York filed an answer to the NRC Staff's motion for partial reconsideration.¹⁰ New York does not oppose the NRC Staff's motion for partial reconsideration to the extent that it requests that the NRC Staff be permitted to file an answer to New York's June 10, 2013 motion.¹¹ Additionally, New York requests that it be allowed to submit brief reply

⁵ Applicant's Motion for Reconsideration of the Board's Decision to Admit Additional New York Exhibits Concerning Contention NYS-5 (June 14, 2013) at 4–9. Entergy indicated that if the Board denies Entergy's motion for reconsideration, it will seek leave to supplement the evidentiary record. Id. at 9.

⁶ See NRC Staff's Motion for Partial Reconsideration of the Board's Order of June 12, 2013 (Granting New York's Motions to Supplement the Record on Contentions NYS-5 and NYS-16B) (June 21, 2013).

⁷ Id. at 2–3.

⁸ Id. at 5.

⁹ Id.

¹⁰ See State of New York's Answer to NRC Staff's Motion for Partial Reconsideration of the Board's Order of June 12, 2013 (Granting New York's Motions to Supplement the Record on Contentions NYS-5 and NYS-16B) (July 1, 2013).

¹¹ Id. at 2.

findings of fact and conclusions of law regarding Contention NYS-16B if the NRC Staff is given the opportunity to respond.¹²

For the reasons discussed below, we deny Entergy's and the NRC Staff's motions for reconsideration. Section 2.323(e) provides that a motion for reconsideration may be filed "upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, that renders the decision invalid."¹³ Reconsideration is permitted only "where manifest injustice would occur in the absence of reconsideration,"¹⁴ The Commission has stated that the reconsideration standard is to be applied strictly, and reconsideration should only be allowed when there is "decisive new information" or "a fundamental . . . misunderstanding of a key point."¹⁵

Viewing the motions for reconsideration in light of these requirements, the Board denies the requests. The Board does not believe that manifest injustice has occurred. In lieu of granting Entergy's and the NRC Staff's motions, the Board will accept and consider the supplemental filing requested by Entergy¹⁶ and the NRC Staff's answer¹⁷ to New York's June 10, 2013 motion. Given that Entergy has responded to New York's motion with substantive

¹² Id. New York requests permission to file combined reply findings of fact and conclusions of law regarding Contention NYS-16B, briefly replying to both the NRC Staff and Entergy. Id. New York proposes a deadline of July 25, 2013. Id.

¹³ 10 C.F.R. § 2.323(e).

¹⁴ Virginia Elec. & Power Co. d/b/a Dominion Virginia Power & Old Dominion Elec. Coop. (North Anna Power Station, Unit 3), LBP-08-23, 68 NRC 679, 681 (2008) (citing Final Rule: "Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2207 (Jan. 14, 2004)).

¹⁵ See Louisiana Energy Servs., L.P. (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622 (2004); Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006).

¹⁶ Applicant's Motion for Reconsideration of the Board's Decision to Admit Additional New York Exhibits Concerning Contention NYS-5 (June 14, 2013) at 9.

¹⁷ NRC Staff's Motion for Partial Reconsideration of the Board's Order of June 12, 2013 (Granting New York's Motions to Supplement the Record on Contentions NYS-5 and NYS-16B) (June 21, 2013) at 5.

argument and accompanying attachments, the Board expects that any supplemental filings and answers be concise. Additionally, the Board will accept and incorporate into the record any responsive supplemental proposed findings of fact and conclusions of law on Contention NYS-16B filed by the NRC Staff. All filings will be considered timely if filed on or before July 22, 2013. New York's request to submit brief reply findings of fact and conclusions of law regarding Contention NYS-16B is denied.

Lastly, on June 20, 2013, Entergy filed a motion for leave to file Entergy communication NL-13-075 as exhibit ENT000608.¹⁸ Per the Board's June 12, 2013 order,¹⁹ Entergy's motion is GRANTED and ENT000608 is admitted.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 9, 2013

¹⁸ See Entergy's Motion for Leave to File, and to Request the Admission of, Hearing Exhibit ENT000608 (June 20, 2013).

¹⁹ Licensing Board Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions) (June 12, 2013) at 2 (unpublished).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying Motions for Reconsideration; Granting Entergy's Motion)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara I. Sola]

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Dated at Rockville, Maryland

this 9th day of July 2013