

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSIONERS

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In re: Docket Nos. 50-247-LR; 50-286-LR

License Renewal Application Submitted by ASLB No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. February 14, 2014
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AMICUS BRIEF OF THE ATTORNEY GENERAL OF CONNECTICUT

SUMMARY

The State of Connecticut files this brief in support of the State of New York’s petition for review (“Petition”) in the above-captioned matter and further urges the Nuclear Regulatory Commission (“Commission”) to grant the Petition and conduct a thorough and complete review of the November 27, 2013 Initial Decision by the Atomic Safety and Licensing Board (“ASLB”) LBP-13-13.

New York’s Petition raises important factual, legal, and public policy questions that need to be resolved before any further action in this proceeding and the State of Connecticut has a direct interest in the outcome of this case.

Interests of the State of Connecticut

As chief legal officer of the State of Connecticut, the Attorney General has long supported efforts to protect the State’s citizens and natural resources from the adverse impacts associated with a potential release of radionuclides from an accident or attack on

a nuclear power station. Connecticut is a densely populated state containing several operating or decommissioned nuclear power facilities. In addition, the Attorney General is currently involved as an interested governmental body in the relicensing proceedings for the Indian Point nuclear power plant. *See In the Matter of Entergy Nuclear Operations, Inc.*, ASLBP No. 07-858-03-LR-BD01, Memorandum and Order at 4 (July 31, 2008), Memorandum and Order at 2 (Dec. 18, 2008). Indian Point is located in New York, close to the border with Connecticut, and fully one-third of Connecticut's citizens reside within the 50-mile ingestion pathway zone (IPZ). *See* GEIS NUREG-1437, Supp. 38, p. 2-3, Figure 2-1 (Location of IP2 and IP3, 50-mi (80-kn) radius). As the NRC, the Federal Emergency Management Agency (FEMA), and the Department of Homeland Security (DHS) have recognized, Indian Point is located in one of the most densely populated regions of the United States. On any given day, approximately, more than 17 million Americans live, work, or travel within 50 miles of the Indian Point facility. Any accident at Indian Point that resulted in a release of radioisotopes could result in a major plume of wind driven radioactive debris that would immediately impact human health and safety in Connecticut. It is clear, therefore, that the State of Connecticut has a direct interest in this case and in the Commission granting New York's petition to review the ASLB's decision.

The Atomic Energy Act

Section 161(b) of the Atomic Energy Act ("AEA") empowers the Nuclear Regulatory Commission to "establish rule[s], regulation[s], or order[s]" to "protect health or to minimize danger to life or property." 42 U.S.C. § 2201(b), (i). The AEA prohibits the NRC from issuing a license to operate a nuclear power plant if it would be "inimical

to the common defense and security or to the health and safety of the public.” 42 U.S.C. § 2133(d). Public safety is “the first, last, and a permanent consideration in any decision on the issuance of a construction permit or a license to operate a nuclear facility. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 404 (1978), *citing Power Reactor Development Corp. v. International Union of Electrical Radio and Machine Workers*, 367 U.S. 396, 402 (1961).

The National Environmental Policy Act

The National Environmental Policy Act, 42 U.S.C § 4321, *et seq.* (“NEPA”), directs that federal agencies must take a “hard look” at the impacts from major federal actions affecting the quality of the environment. “NEPA was created to ensure that agencies will base decisions on detailed information regarding significant environmental impacts and that information will be available to a wide variety of concerned public and private actors. *Morongo Band of Mission Indians v. Federal Aviation Administration*, 161 F.3d 569, 575 (9th Cir. 1998)” (quoted in *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170, 175 (5th Cir. 2000)). A detailed environmental impact statement “insures the integrity of the agency process by forcing it to face those stubborn, difficult-to-answer objections without ignoring them or sweeping them under the rug” and serves as an “environmental full disclosure law so that the public can weigh a project’s benefits against its environmental costs.” *Sierra Club v. United States Army Corps of Eng’rs* (Sierra Club II), 772 F.2d 1043, 1049 (2d Cir. 1985); *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). As the ASLB noted in its Initial Decision, the NEPA review of the Indian Point relicensing is separate from and broader than the scope the AEA safety issues. Initial Decision, p. 30.

For some time even after the 1979 Three Mile Island accident, NRC licensing actions did not examine the environmental impacts of severe reactor accidents and the potential alternatives to mitigate such impacts. In 1989, however, the United States Court of Appeals for the Third Circuit rejected NRC's position and required the agency to examine such impacts and alternatives on a site specific basis. *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (3d Cir. 1989).

Position of the State of Connecticut

The importance of this Petition to the State of Connecticut cannot be overstated. As Connecticut has made clear in its earlier filings in this proceeding, two of the State's counties, Fairfield and Litchfield, lie within the 50 mile EPZ. Fully one third of the population of the state is within the 50 mile EPZ. The Indian Point site is 23 miles from Greenwich, 26 miles from Stamford, 27 miles from Danbury, and 37 miles from Bridgeport. Of course the State's principal concern is the health and safety of its citizens. Any significant release of radioisotopes from an accident at Indian Point would have direct and immediate impact on Connecticut's residents particularly by virtue of impacts to surface and drinking water resources. In this regard, there are significant surface water resources in Fairfield County including the Housatonic River, Candlewood Lake, and public water supply reservoirs and well fields that directly serve Connecticut citizens and that are of great importance to the State.¹ In fact, at least one Connecticut municipality is served by public water supply reservoirs owned by Connecticut companies but located just over the border in New York and exceedingly close to Indian Point.

¹ Connecticut law prohibits disclosure of certain information relating to public drinking water resources and therefore the names and locations of important reservoirs cannot be publicly provided. Conn. Gen. Stat. 1-210(b)(19)

In addition to human health and safety issues, there are very important economic resources in the potentially impacted portion of the State adjacent to New York. Specifically, Stamford, Connecticut, is home to numerous major corporate headquarters for national and international corporations. The potential economic impact of even a temporary shutdown of these offices due to dispersed radiation from a fire or other accident at Indian Point would be immense. In addition, there would be potential impacts to lost manufacturing facilities, such as the Sikorsky helicopter plant, and severe losses to real estate values in one of the most expensive regions of the country. None of these impacts have been adequately analyzed to date in this matter.

The State of Connecticut shares the concerns expressed by New York concerning the integrity of that input values used in the computer analysis for the required site specific review of consequences, and mitigation alternatives. Connecticut submits that the inputs do not begin to adequately account for the cost of effectively decontaminating, for example, the commercial and residential areas of Stamford, Greenwich, or Danbury. The input values appear to lack primary support or are based on out-of-date assumptions and documents. Further, as the evidentiary hearing confirmed, some impacts, such as the cost of replacement or remediation of drinking water resources critical to human life, the remediation of surface water resources, or permanent salary and economic loss were never considered at all. Hearing Transcript at 2278, 2285, 1975. These concerns are further underscored given that it is not clear that the Price Anderson framework would provide money to decontaminate and remediate affected areas and resources.

These are not hypothetical concerns. After the March 2011 accident at the Fukushima nuclear power facility, the government of Japan instituted a 12-mile mandatory evacuation zone, and the United States government and NRC instructed American citizens within 50 miles to evacuate. Thus, it can be seen that the 10 mile evacuation and emergency planning zone around Indian Point would be a minimum and that a much larger zone is likely. Further, existing evacuation plans do not take into account the tendency of people living outside a designated zone deciding to self-evacuate on their own initiative. Thus, any assumptions regarding the number of people expected to evacuate, either as directed by officials or on their own, must be considered approximate and, in most cases, excessively conservative. Furthermore, the social, environmental and economic consequences will likely persist for extended periods of time, as will decontamination work. As was demonstrated by the 1986 disaster at the Chernobyl nuclear power station in the Ukraine and more recently the damage caused to the Fukushima reactors and spent fuel pool, adverse impacts can continue for many years after the event and these accidents show conclusively that impacts can persist for years and that evacuations have collateral environmental consequences and it is not possible to state with any certainty when populations relocated from areas around Fukushima and Chernobyl will be permitted to return, if ever. The decontamination time used in the analysis here for Indian Point is disconnected from real world experience. Thus, the impacts related to a major population relocation can reasonably be expected to be long term. One need look no further that the experiences in the United States from Hurricanes Katrina and Rita in

2005 to see that regional disasters result in complex resettlement impacts which in turn burden local communities and natural resources.

Consequently, a full and complete review of the environmental impacts from a major release from Indian Point is required and to date this has not been done.

CONCLUSION

The issues raised in the Petition directly address important issues involving human health and safety and the potential damage to significant natural resources. The interests of the State of Connecticut are clear and unequivocal in this regard. The State therefore urges the Commission to grant the Petition and review the Initial Decision of the ASLB.

Respectfully submitted,

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Dated: February 14, 2014.