

February 24, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S ANSWER TO STATE OF CONNECTICUT'S
MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to the motion for leave to file a brief *amicus curiae*, filed by the State of Connecticut ("Connecticut") on February 14, 2014.¹ For the reasons set forth below, the Staff does not oppose Connecticut's Motion, provided the Staff is permitted to file a response to Connecticut's *amicus curiae* brief when the Staff files its answer to the State of New York's petition for review of the Atomic Safety and Licensing Board's ("Board") Partial Initial Decision (LBP-13-13),² or at such other time as may be ordered by the Commission.

¹ "State of Connecticut's Motion for Leave to File Brief Amicus Curiae in Support of the State of New York's Petition for Review of the Atomic Safety and Licensing Board's Partial Initial Decision LBP-13-13" (Feb. 14, 2014) ("Motion").

² "State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 with Respect to Consolidated Contention NYS-12C" (Feb. 14, 2014) ("Petition").

DISCUSSION

In its Motion, Connecticut seeks leave to file an *amicus curiae* brief in support of the State of New York's February 14, 2014, petition for Commission review of LBP-13-13.³ Along with its Motion, Connecticut filed its *amicus curiae* brief.⁴ Therein, Connecticut stated, *inter alia*, that it is participating in this proceeding as an interested State government (under 10 C.F.R. § 2.315(c)), that the Indian Point facility is located close to the Connecticut border, that one-third of Connecticut's population is located within the facility's the 50-mile ingestion pathway emergency planning zone, and that an accident or attack at Indian Point that results in a release of radionuclides could adversely affect its citizens.⁵ Further, Connecticut states that its Amicus Brief (a) provides "a perspective that will aid the Commission in determining whether to grant New York's petition for review" and, allegedly, (b) does not raise new issues or alter the content of the evidentiary record.⁶

The Staff submits that Connecticut's Motion satisfies the Commission's requirements governing the filing of briefs *amicus curiae*, as set forth in 10 C.F.R. § 2.315(d). That regulation provides as follows:

(d) If a matter is taken up by the Commission under § 2.341 or *sua sponte*, a person who is not a party may, in the discretion of the Commission, be permitted to file a brief "*amicus curiae*." Such a person shall submit the amicus brief together with a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Unless the Commission provides otherwise, the brief must be filed within the time allowed to the party whose position the brief will support. . . .

³ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC __ (Nov. 27, 2013) (slip op.).

⁴ "Amicus Brief of the Attorney General of Connecticut" (Feb. 14, 2014) ("Amicus Brief").

⁵ Motion at 2.

⁶ *Id.* at 3.

Connecticut has satisfied these requirements, in that it (a) filed its Amicus Brief along with its Motion, (b) identified its interest in the proceeding, (c) stated reasons why consideration of its brief is desirable, and (d) filed its brief within the time that was afforded to the State of New York to file its petition for review.

Moreover, the Staff notes that Connecticut is currently participating in this proceeding as an interested State. Thus, on September 25, 2008, Connecticut submitted a request to participate as an interested governmental body in this proceeding – and it identified Contentions NYS-12, NYS-16, NYS-24, NYS-26, Riverkeeper EC-3, and Clearwater EC-3 as admitted contentions on which it intends to participate.⁷ On December 18, 2008, the Board authorized Connecticut to participate in the proceeding pursuant to 10 C.F.R. § 2.315(c).⁸ Having been afforded the right to participate as an interested State, and having identified Contention NYS-12 (the predecessor to NYS-12C) as a contention as to which it would participate, Connecticut could have filed its own petition for review of the Board’s decision on that contention.⁹ Further, if Connecticut had done so, its petition would have been due by February 14, 2014, the same date that it filed its Amicus Brief. Accordingly, the Staff does not oppose Connecticut’s filing of its Amicus Brief in support of New York’s petition for review on Contention NYS-12C.

Nonetheless, although Connecticut states that its Amicus Brief does not raise new issues or alter the content of the adjudicatory record, the Staff notes that numerous statements

⁷ “Request of the State of Connecticut for an Opportunity to Participate as an Interested Government Body in Proceeding and Hearing on Relicensing of Indian Points Units 2 and 3” (Sept. 25, 2008). Connecticut had filed a petition for leave to intervene in the proceeding, which was denied for failure to state an admissible contention. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43, 161-66 (2008).

⁸ Board Memorandum and Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) (Dec. 18, 2008) at 2 (unpublished).

⁹ 10 C.F.R. § 2.315(c) (“The representative shall be permitted to . . . petition for review by the Commission under § 2.341 with respect to the admitted contentions. The representative shall identify those contentions on which they will participate in advance of any hearing held.”).

contained in Connecticut's Amicus Brief do raise issues (e.g., emergency planning, relocation impacts, water resource impacts, the Price-Anderson Act, Fukushima, Chernobyl, and hurricane evacuations) that exceed the scope of Contention NYS-12C and/or are beyond the proper scope of this license renewal proceeding. Accordingly, the Staff reserves the right to oppose the consideration of such issues in connection with the Commission's consideration of New York's petition for review. The Staff's views with respect to such matters will be set forth in the Staff's answer to Connecticut's Amicus Brief, which the Staff will file along with its answer to New York's petition for review, or at such other time as may be ordered by the Commission.

CONCLUSION

For the foregoing reasons, the Staff does not oppose Connecticut's motion for leave to file its brief *amicus curiae*, provided the Staff is afforded an opportunity to file an answer to that brief when it files its answer to New York's petition for review of LBP-13-13, or at such other time as may be ordered by the Commission.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 24th day of February 2014

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO STATE OF CONNECTICUT'S MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE," dated February 24, 2014, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 24th day of February, 2014.

/Signed (electronically) by/

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