

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

February 19, 2016

ORDER

(Requesting Expert Testimony on New York's Proposed Exhibits and
Suspending Deadline for Filing Proposed Findings of Fact and Law)

I. Request for Additional Testimony

On February 5, 2016, the State of New York (New York) filed a motion seeking leave to file six additional documents as exhibits in this license renewal proceeding.¹ The documents include four Westinghouse reports generated in support of the Indian Point license renewal application, one technical paper, and one NRC Staff Inspection Paper.² Entergy Nuclear Operations, Inc. (Entergy) opposes the admittance of the technical paper on the grounds that New York has failed to establish its relevance, materiality, and reliability through the use of expert testimony or any other means, although it fails to make a similar argument against the

¹ State of New York Motion for Leave to File Six Documents as Additional Exhibits (Feb. 5, 2016) [hereinafter NY Motion].

² NY Motion, attach. 1, New York State List of Attachments and Proposed Exhibit Tables at 2-3 (Feb. 5, 2016).

admissibility of the Westinghouse reports.³ The NRC Staff opposes the admittance of the technical paper as well as the four Westinghouse reports.⁴

The Board grants New York's motion as conditioned by this order. The Board disagrees with New York's assertion that "[t]he plain language and content of the six documents convey the clear relevance and materiality of the documents to this proceeding."⁵ It is the opinion of this Board that these exhibits do not speak for themselves, and, as argued by both the Staff and Entergy, require the testimony of an expert witness attesting to their materiality.⁶ While the Board is sympathetic to New York's impetus to file its motion quickly, the lack of testimony with New York's submission means, contrary to New York's claim that its motion "will not . . . delay the proceeding," the Board must now order additional testimony, which will in fact cause delay by at least a month.

Despite the Board's dissatisfaction with New York's characterization of its proffered exhibits, the Board feels that ensuring completeness of the record is cause to permit such a delay. As such, the Board directs that New York, the NRC Staff, and Entergy (the Parties) file expert testimony about the relevance, materiality, and reliability of these exhibits. No later than March 4, 2016, New York shall file such expert testimony. Entergy and the NRC Staff shall file their respective expert testimony no later than March 18, 2016. New York may then file reply expert testimony no later than March 25, 2016. Should any Party feel it cannot file testimony by its deadline, such Party should promptly file with the Board a motion for an extension of time establishing good cause for the request.

³ Entergy's Answer to State of New York's Motion for Leave to File Six Documents as Additional Exhibits (Feb. 16, 2016) [hereinafter Entergy Answer].

⁴ NRC Staff's Answer to "State of New York Motion for Leave to File Six Documents as Additional Exhibits" (Feb. 16, 2016) [hereinafter NRC Answer].

⁵ NY Motion at 4.

⁶ Staff Answer at 2; Entergy Answer at 9.

II. Suspension of Deadline for Filing Proposed Findings of Fact and Law

The deadlines for filing Proposed Findings of Fact and Conclusions of Law, currently set as February 29, 2016, and Replies to Proposed Findings of Fact and Conclusions of Law, currently set as March 30, 2016,⁷ are suspended pending the filing of the requested testimony. Once the requested testimony has been received, these deadlines will be re-scheduled with at least two weeks' notice to the Parties.

III. Closing of the Record

At this time, the record in this proceeding remains open. However, the record will be closed within ten days of receipt of the pleadings discussed above, unless within that time, the Board notifies the Parties that it will require additional testimony regarding these six proposed exhibits.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 19, 2016

⁷ Order (Setting Post-Hearing Briefing Schedule) (Dec. 7, 2015) (unpublished).

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 **ORDER (Requesting Expert Testimony on New York's Proposed Exhibits and Suspending Deadline for Filing Proposed Findings of Fact and Law)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-7H4M
Washington, DC 20555-0001
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

Lawrence G. McDade, Chair
Administrative Judge
lawrence.mcdade@nrc.gov

Richard E. Wardwell
Administrative Judge
richard.wardwell@nrc.gov

Michael F. Kennedy
Administrative Judge
michael.kennedy@nrc.gov

Alana Wase, Law Clerk
alana.wase@nrc.gov

Julie Reynolds-Engel, Law Clerk
Julie.Reynolds-Engel@nrc.gov

Edward L. Williamson, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Sherwin E. Turk, Esq.
Brian Harris, Esq.
Anita Ghosh, Esq.
Christina England, Esq.
Catherine E. Kanatas, Esq.
Joseph Lindell, Esq.
John Tibbetts, Paralegal
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
edward.williamson@nrc.gov
beth.mizuno@nrc.gov; sherwin.turk@nrc.gov;
brian.harris.@nrc.gov;
david.roth@nrc.gov;
anita.ghosh@nrc.gov;
christina.england@nrc.gov;
catherine.kanatas@nrc.gov;
joseph.lindell@nrc.gov;
john.tibbetts@nrc.gov

OGC Mail Center
OGCMailCenter@nrc.gov

William B. Glew, Jr.
Organization: Entergy
440 Hamilton Avenue, White Plains, NY 10601
wglew@entergy.com

ORDER (Requesting Expert Testimony on New York's Proposed Exhibits and Suspending Deadline for Filing Proposed Findings of Fact and Law)

Elise N. Zoli, Esq.
Goodwin Procter, LLP
Exchange Place, 53 State Street
Boston, MA 02109
ezoli@goodwinprocter.com

Daniel Riesel, Esq.
Victoria Shiah Treanor, Esq.
Adam Stolorow, Esq.
Natoya Duncan, Paralegal
Counsel for Town of Cortlandt
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
driesel@sprlaw.com; vtreanor@sprlaw.com
astolorow@sprlaw.com; nduncan@sprlaw.com

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Raphael Kuyler, Esq.
Brooke McGlenn, Esq.
Grant Eskelsen, Esq.
Ryan Lighty, Esq.
Lesa G. Williams-Richardson, Legal Secretary
Doris Calhoun, Legal Secretary
Mary Freeze, Legal Secretary
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
ksutton@morganlewis.com
martin.oneill@morganlewis.com
rkuyler@morganlewis.com;
lescher@morganlewis.com
bmcglenn@morganlewis.com
sraimo@morganlewis.com
geskelsen@morganlewis.com
righly@morganlewis.com
lrichardson@morganlewis.com
dcalhoun@morganlewis.com
mfreeze@morganlewis.com

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan,
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
mjr1@westchestergov.com

Bobby Burchfield, Esq.
Matthew Leland, Esq.
Emre Iltter, Esq.
McDermott, Will and Emery LLP
500 North Capitol Street NW
Washington, DC 20001
bburchfield@mwe.com
mleland@mwe.com
eilter@mwe.com

Matthew W. Swinehart, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
mswinehart@cov.com

Manna Jo Greene, Environmental Director
Steven C. Filler
Peter A. Gross
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
mannaio@clearwater.org;
stephenfiller@gmail.com;
peter@clearwater.org

Andrew Reid, Esq.
Organization: Hudson River Sloop
Clearwater, Inc.
Ved Nanda Center for International and
Comparative Law
1075 Waite Drive
Boulder, CO 80303
lawyerreid@gmail.com

Richard Webster, Esq.
Public Justice, P.C.
For Hudson River Sloop Clearwater, Inc.
1825 K Street, NW, Suite 200
Washington, D.C. 20006
rwebster@publicjustice.net

Michael J. Delaney, Esq.
Director, Energy Regulatory Affairs
NYC Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373
mdelaney@dep.nyc.gov

Docket Nos. 50-247-LR and 50-286-LR

ORDER (Requesting Expert Testimony on New York's Proposed Exhibits and Suspending Deadline for Filing Proposed Findings of Fact and Law)

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
robert.snook@po.state.ct.us

David A. Repka, Esq.
Victoria Hsia, Esq.
Carlos L. Sisco, Paralegal
Winston & Strawn
1701 K Street NW
Washington, DC 20006
drepka@winston.com
vhsia@winston.com
CSisco@winston.com

Paul Gallay, Esq.
Deborah Brown
Ramona Cearley, Secretary
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
pgallay@riverkeeper.org
dbrown@riverkeeper.org
rcearley@riverkeeper.org

John J. Sipos, Esq.
Lisa S. Kwong, Esq.
Brian Lusignan, Esq.
Mihir Desai, Esq.
Assistant Attorneys General
Teresa Manzi, Legal Assistant
Siobahn Blank, Legal Assistant
Office of the Attorney General
of the State of New York
The Capitol, State Street
Albany, New York 12224
john.sipos@ag.ny.gov
lisa.kwong@ag.ny.gov
brian.lusignan@ag.ny.gov
mihir.desai@ag.ny.gov
teresa.manzi@ag.ny.gov
siobahn.blank@ag.ny.gov

Kathryn M. DeLuca, Esq.
Laura Heslin, Esq.
Assistant Attorneys General
Office of the Attorney General
of the State of New York
120 Broadway, 26th Floor
New York, New York 10271
kathryn.deluca@ag.ny.gov
laura.heslin@ag.ny.gov

Sean Murray, Mayor
Kevin Hay, Village Administrator
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
smurray@villageofbuchanan.com
administrator@villageofbuchanan.com

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 19th day of February, 2016