

July 3, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
NUCLEAR MANAGEMENT)	Docket No. 50-255
COMPANY, LLC)	
)	
(Palisades Nuclear Plant))	

NRC STAFF OPPOSITION TO REQUEST FOR REDRAFT OF EIS,
ADDITIONAL COMMENT PERIOD, AND FOR NEW PERIOD
FOR RECEIPT OF CONTENTIONS ON TERRORISM

INTRODUCTION

On June 22, 2006, multiple organizations (Requestors)¹ filed "Notice of Pertinent New Case Affecting Proceedings; Request for Redraft of EIS, Additional Comment Period, and for New Period for Receipt of Contentions on Terrorism." (Request). The Request asks that the Commission consider the recent opinion of the Ninth Circuit in *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*² as controlling precedent and apply it to all aspects of the Palisades Nuclear Plant (Palisades) license renewal matter. Request at 3. The Request

¹ The Organizations are: Don't Waste Michigan, West Michigan Environmental Action Council (WMEAC), the Citizens Action Coalition of Indiana; Canadian Coalition for Nuclear Responsibility/Regroupement pour la surveillance du nucléaire; Citizens for Alternatives to Chemical Contamination; Citizens Resistance at Fermi Two (CRAFT); Citizens for Renewable Energy; Huron Environmental Activist League; Clean Water Action; Home for Peace and Justice; Great Lakes United; Nuclear Information and Resource Service (NIRS), IHM Justice, Peace and Sustainability Office; Indigenous Environmental Network (IEN); International Institute of Concern for Public Health; Lone Tree Council; Kalamazoo River Protection Association; Michigan Citizens for Water Conservation; Michigan Land Trustees; Michigan Environmental Council; Michigan Interfaith Climate and Energy Campaign/Voices for Earth Justice; National Environmental Trust; Nuclear Energy Information Service (NEIS); Nuclear-Free Great Lakes Campaign; Nuclear Policy Research Institute; Nukewatch; Radiological Evaluation & Action Project, Great Lakes; Sierra Club, Mackinac (Michigan) Chapter; and Van Buren County Greens. The Request alleges that all of the organizations are public interest groups who are participants in the Palisades license renewal proceeding, either by participation in adjudicatory proceedings or in commenting on the draft environmental impact statement. Request at 1-2.

² 9th Circuit, No. 03-74628, June 2, 2006.

asks the Commission to complete a NEPA (National Environmental Policy Act) analysis of the potential environmental effect of terrorist attacks on the Palisades Nuclear Plant, include it in a revised DEIS,³ and extend the comment period on the DEIS. *Id.* The Request further asks the Commission to set a new deadline for the filing of contentions related to the issue of terrorism. *Id.* The staff of the Nuclear Regulatory Commission (Staff) hereby files its response to the Request. As discussed in greater detail below, the Request should be denied.

BACKGROUND

By letter dated March 22, 2005, Nuclear Management Company, LLC (NMC) submitted an application for renewal of Operating License No. DPR-20 for the Palisades Nuclear Plant for an additional 20 years.⁴ On June 8, 2005, the NRC published, in the *Federal Register*, a notice of acceptance for docketing and opportunity for hearing regarding the license renewal application.⁵ On August 8, 2005, a "Request for Hearing and Petition to Intervene" (Petition) on NMC's license renewal application was filed jointly by the Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don't Waste Michigan, the Green Party of Van Buren County, the Michigan Land Trustees, and 31 individuals (Petitioners). The Petition included twelve proposed contentions, including one that raised the issue of "threats of terrorist attack and sabotage" (proposed contention 11).⁶ On September 2, 2005, the Staff and

³ Requestors are referring to NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 27 (Palisades Nuclear Plant), Draft for Comment, February 2006 (ADAMS accession No. ML060400430) (hereinafter "SEIS").

⁴ See Letter from Daniel J. Malone, Site Vice President, Palisades Nuclear Plant, [NMC], to U.S. NRC (Mar. 2, 2005) (ADAMS Accession No. ML050940434).

⁵ See [NMC], Palisades Nuclear Plant; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR-20 for an Additional 20-Year Period, 70 Fed. Reg. 33,533 (June 8, 2005).

⁶ That proposed contention read:

Threats of terrorist attack and sabotage against the Palisades

(continued...)

NMC filed separate responses to the Petition.⁷ On September 15, 2005, Petitioners filed a reply⁸ to the Staff and NMC's responses. In the reply, Petitioners withdrew proposed contention 11. Reply at 55. On March 7, 2006, the Licensing Board issued a Memorandum and Order (Ruling on Standing, Contentions, and Other Pending Matters), denying intervention.⁹ On March 17, 2006, Petitioners filed an appeal from LBP-06-10, seeking review of the decision as to proposed contentions one and three.¹⁰ On March 27, 2006, the Staff and NMC filed responses to the appeal.¹¹ On June 23, 2006, the Commission issued CLI-06-17, affirming the Licensing Board's decision. *Nuclear Management Co., L.L.C.* (Palisades Nuclear Plant), CLI-06-17, slip op. (June 23, 2006). In its decision, the Commission acknowledged receipt of the

⁶(...continued)

nuclear power plant.

Located on the shoreline of Lake Michigan, the source of drinking water, fish, recreation, and other economic value to tens of millions of people downstream, Palisades represents a target for potentially catastrophic terrorist attack or sabotage intended to release large amounts of radioactivity into the Great Lakes basin. Palisades represents a radioactive bull's eye on the shore of 20% of the planet's surface fresh water, the Great Lakes. The operating reactor (containing many billions of curies of radioactivity) and high-level waste storage pool (containing tens to hundreds of millions of curies) are vulnerable to such attack, as are the outdoor dry storage casks, so highly visible stored in plain sight.

⁷ See NRC Staff Answer Opposing Petition to Intervene and Request for Hearing, (September 2, 2005); Nuclear Management Company's Answer to the August 8, 2005 request for Hearing and Petition to Intervene, (September 3, 2005).

⁸ See Petitioners' Combined Reply to NRC Staff and Nuclear Management Company Answers, September 15, 2005 (Reply).

⁹ See *Nuclear Management Co.* (Palisades Nuclear Plant), LBP-06-10, 63 NRC (2006).

¹⁰ See Petitioners Notice of Appeal from ASLB Denial of Hearing, and Supporting Brief, (March 17, 2006).

¹¹ See NRC Staff's Brief in Opposition to Appeal from LBP-06-10, (March 27, 2006); Nuclear Management Company's Brief in Opposition to Petitioner's Appeal of Board Decision Denying Intervention, (March 27, 2006).

Request and stated that it would address the Request at a later time. *Id.* at 10 n.31.

On June 2, 2006, the Ninth Circuit Court of Appeals issued its decision in the *San Luis Obispo Mothers* case. Requestors now ask the Commission to apply that case as binding precedent to the Palisades license renewal matter.

DISCUSSION

The Request should be denied. The Requestors are asking the Commission to take actions that fall in two separate areas of authority. First, they are asking the Commission to take action in its supervisory capacity and require the Staff to perform additional analyses regarding the potential environmental impacts of terrorist attack scenarios and to reopen or extend the comment period on the draft SEIS. Second, in the context of the adjudication, they are asking the Commission to reopen the time period for filing contentions.

As to the first request, responses to requests regarding the scope of matters being reviewed under NEPA are normally the responsibility of the Staff, as is the preparation of the SEIS. As such, unless separately the subject of an otherwise admitted contention, they are not subject to adjudicatory review.¹² The draft SEIS has been prepared and published for comment.¹³ Comments have been received, including comments from one or more of the Requestor groups, and the Staff will be responding to those comments in the final SEIS. The NEPA process is still ongoing. It is, thus, inappropriate for the Requestors to ask the Commission to compel the Staff to undertake any further analysis. Therefore, the Staff submits that the request should be denied.

Further, the issue sought to be addressed, the environmental impacts of terrorism, is

¹² Even if they were subject to such review, the Requestors have not met the requirements for such review, as discussed elsewhere in this brief.

¹³ See NUREG-1437, GEIS, Supplement 27 (Palisades Nuclear Plant) (ADAMS accession no. ML060400430).

outside the scope of the SEIS. The issue has been resolved generically in the GEIS.¹⁴ Issues that have been resolved generically are classified as Category 1 issues and are not evaluated further in the site specific supplement to the GEIS. See, e.g., 10 C.F.R. § 51.71(d). Moreover, consideration of environmental issues in the context of license renewal proceedings is specifically limited by 10 C.F.R. Part 51 and by the GEIS. See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 2 and 3) (*Turkey Point*), CLI-01-17, 54 NRC 3, 11-13 (2001). Terrorism is an issue that has been addressed in the GEIS. See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358 (2002). As the Commission noted in that case, “the NRC has already issued a . . . GEIS that considers sabotage in connection with license renewal. . . . The GEIS concluded that, if such an event were to occur, the resultant core damage and radiological releases would be no worse than those expected for internally initiated events. See [GEIS], Vol. 1 at p. 5-18.” *Id.* at 365, n. 24. Therefore, terrorism is outside the scope of both the SEIS and the adjudicatory proceeding.

Requestors are asking that the Commission find that *San Luis Obispo Mothers* is binding precedent and apply it to all aspects of this license renewal matter. The Staff submits that the case is not precedential and should not be applied to this case. *San Luis Obispo Mothers* concerned issuance of a license for an Independent Spent Fuel Storage Installation (ISFSI). The instant matter concerns license renewal. The only relevant precedent, in which the Commission specifically addressed the question of terrorism-related issues in the context of a license renewal proceeding, is *McGuire*. CLI-02-26, 56 NRC 358. In that case, the Commission found that there is no need to address terrorism issues as part of the NEPA review in license renewal proceedings, stating that “it is sensible not to devote resources to the likely

¹⁴ NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, May 1996.

impact of terrorism during the license renewal period, but instead to concentrate on how to prevent a terrorist attack in the near term at the already licensed facilities.” *McGuire*, CLI-02-26, 56 NRC at 365. In addition, the Commission affirmed that it has adequately addressed terrorism issues generically in the Generic Environmental Impact Statement (GEIS). *Id.* at 365, n.24 (citations omitted). Thus, *San Luis Obispo Mothers* is distinguishable from this case and should not be given precedential effect.

The Requestors are asking the Commission’s, in its adjudicatory capacity, to extend or reopen the period for filing contentions. In this regard, any of the Requestors that were not petitioners¹⁵ in the adjudicatory proceeding should first establish standing before they request any Commission action relating to the adjudication. They have made no effort to do so.

As to the Requestors that were Petitioners in the adjudicatory proceeding, they abandoned, without comment, the contention dealing with terrorism.¹⁶ The issue was not raised on appeal to the Commission. Therefore, they should not now be heard regarding any issues raised by the abandoned contention.

In addition, to the extent that the Requestors are seeking to file a late-filed petition to intervene or contention, they have made no effort to comply with the requirements of 10 C.F.R. § 2.309(c), regarding the requirements for untimely petitions and contentions, or 10 C.F.R. § 2.309(f)(2), regarding new information. The Commission’s regulations permit the filing of late contentions only upon a determination that the request/petition has met the factors contained

¹⁵ “Petitioners” are the entities that requested a hearing and petitioner for intervention in the matter that was the subject of CLI-06-17. They are: Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don’t Waste Michigan, the Green Party of Van Buren County, the Michigan Land Trustees and individual members of the organizations. See, e.g., CLI-06-17, slip op. at 1. The Requestors named in the Request include the Petitioners and twenty-five other entities.

¹⁶ In any event, the proposed contention did not meet the requirements of 10 C.F.R. § 2.309 and, in our view, would have been rejected in that it was vague, unfocussed, lacked basis, specificity and support, was beyond the scope of the license renewal proceeding, was immaterial, and failed to establish that a genuine dispute existed on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi).

in 10 C.F.R. §2.309(c) (*e.g.*, good cause for failure to file on time), and 10 C.F.R. § 2.309(f)(2), on (new information not previously available and new information that is materially different from information previously available). The Requestors have completely failed to address any of the criteria. Therefore, the request should be denied.

Similarly, the request for an extension or reopening of the time to file contentions should be denied. The regulations cited above provide an avenue for requesting a hearing or intervention out of time. Therefore, there is no cause for the Commission to issue an individual order reopening the time period for filing a contention.

CONCLUSION

Based on the foregoing discussion, there is no reason for the Commission to order the Staff to undertake any further analysis and supplement the SEIS. In addition there is no justification for taking any action to reopen the closed hearing. Therefore, the Request should be denied.

Respectfully submitted,

/RA/

Susan L. Uttal
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 3rd day of July, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
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NUCLEAR MANAGEMENT)	Docket No. 50-255-LR
COMPANY, LLC)	
)	
(Palisades Nuclear Generating Plant))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S BRIEF IN OPPOSITION TO REQUEST FOR REDRAFT OF EIS, ADDITIONAL COMMENT PERIOD, AND FOR NEW PERIOD FOR RECEIPT OF CONTENTIONS ON TERRORISM," in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, by U.S. mail, first class, as indicated by double asterisk, with copies by electronic mail, or by U.S. mail, first class, as indicated by triple asterisk, this 3RD day of July, 2006.

Office of the Secretary*
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dr. Anthony Baratta*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: ajb5@nrc.gov)

Dr. Nicholas G. Trikouros*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: n.trikouros@att.net)

Ann Marshall Young*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: amy@nrc.gov)

Terry J. Lodge, Esq.**
316 N. Michigan Street, Suite 520
Toledo, OH 43624-1667
(E-mail: tjlodge50@yahoo.com)

Kary Love, Esq.**
 Executive Business Center
 348 Waverly Road, Suite 2
 Holland, MI 49423
 (E-mail: kary_love@yahoo.com)

Paul Gunter**
 Director
 Nuclear Information & Resource Service
 1424 16th Street, NW
 Suite 404
 Washington, DC 20036
 (E-mail: pgunter@nirs.org)

Alice Hirt***
 Western Michigan Environmental Action Co.
 1415 Wealthy Street, SE
 Suite 280
 Grand Rapids, MI 49506

Chuck Jordan**
 Chairman
 Green Party of Van Buren County
 50521 34th Avenue
 Bangor, MI 49013
 (E-mail: jordanc@btc-bci.com)

Michael Keegan**
 Co-Chair
 Don't Waste Michigan
 2213 Riverside Drive, NE
 Grand Rapids, MI 49505
 (E-mail: mkeeganj@comcast.net)

Maynard Kaufman***
 Michigan Land Trustees
 25485 County Road 681
 Bangor, MI 49013

Paul A. Gaukler, Esq.**
 Pillsbury Winthrop Shaw Pittman, LLP
 2300 N Street, N.W.
 Washington, DC 20037-1128
 (E-mail: paul.gaukler@pillsburylaw.com)

David R. Lewis, Esq.**
 Pillsbury Winthrop Shaw Pittman, LLP
 2300 N Street, N.W.
 Washington, DC 20037-1128
 (E-mail: david.lewis@pillsburylaw.com)

Jonathan Rogoff, Esq.**
 Vice President, Counsel, & Secretary
 Nuclear Management Company, LLC
 700 First Street
 Hudson, WI 54016
 (E-mail: jonathan.rogoff@nmcco.com)

/RA/

Susan L. Uttal
 Counsel for NRC Staff