

July 30, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 RESPONSE TO THE STATEMENT OF
POSITION OF THE ATTORNEY GENERAL OF CONNECTICUT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.315(c) and the Atomic Safety and Licensing Board's ("Board") July 1, 2010 Scheduling Order in this proceeding, the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to the June 28, 2012 Statement of Position filed by the Attorney General of Connecticut ("Connecticut").¹ For the reasons set forth below, the Staff submits that while Connecticut's Statement of Position raises issues of concern to Connecticut, the issues Connecticut raises are not relevant to any admitted contention in this proceeding and are not supported by any testimony or other evidence. Accordingly, Connecticut's Statement of Position should be given no evidentiary consideration. Further, Connecticut's Statement of Position has no bearing on the issues to be addressed in the upcoming evidentiary hearings or in the Board's Initial Decision in this proceeding and it therefore should be afforded no consideration in the evidentiary hearings or the Board's Initial Decision.

¹ Statement of Position of the Attorney General of Connecticut (June 28, 2012) ("Connecticut SOP").

DISCUSSION

A. Procedural History

On April 23, 2007, Entergy Nuclear Operations, Inc. (“Entergy” or “Applicant”) filed an application to renew the operating licenses for Indian Point Nuclear Generating Units 2 and 3 (“Indian Point” or “IP2 and IP3”), for an additional period of 20 years.² On May 11, 2007, the Nuclear Regulatory Commission (“NRC”) published a notice of receipt of the Indian Point license renewal application (“LRA”),³ and on August 1, 2007, the NRC published a notice of acceptance for docketing and notice of opportunity for hearing on the LRA.⁴

On November 30, 2007, the State of New York (“New York”) along with various other petitioners including Riverkeeper, Inc. (“Riverkeeper”) and Connecticut, filed petitions for leave to intervene in the proceeding.⁵ In its petition to intervene, Connecticut submitted two contentions regarding spent fuel pools and evacuation protocols (emergency planning).⁶ On December 10, 2007, Hudson River Sloop Clearwater, Inc. (“Clearwater”) filed a petition to

² Letter from Fred Dacimo, Site Vice President (Entergy) to NRC Document Control Desk, dated April 23, 2007 (ADAMS Accession No. ML071210108), as supplemented by letters dated May 3 and June 21, 2007 (ADAMS Accession Nos. ML071280700 and ML071800318).

³ “Entergy Nuclear Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3; Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period,” 72 Fed. Reg. 26,850 (May 11, 2007).

⁴ “Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period,” 72 Fed. Reg. 42,134 (Aug. 1, 2007).

⁵ See (1) New York State Notice of Intention to Participate and Petition to Intervene (Nov. 30, 2007); (2) Riverkeeper, Inc.’s Request for Hearing and Petition to Intervene in the License Renewal Proceeding for the Indian Point Nuclear Power Plant (Nov. 30, 2007); and (3) Petition for Leave to Intervene, Request for Hearing and Contentions of Richard Blumenthal, Attorney General of Connecticut, for the License Renewal Proceeding for Indian Point Nuclear Generating Unit Nos. 2 and 3, DPR-26 and DPR-64 (Nov. 30, 2007) (“Connecticut Petition”).

⁶ See Connecticut Petition at 13-20.

intervene in the proceeding.⁷ Responses to these petitions and the petitioners' contentions were duly filed by the Applicant and by the Staff.⁸

On July 31, 2008, the Board issued its decision in LBP-08-13, in which it, *inter alia*, granted the State of New York, Riverkeeper, and Clearwater's (collectively "Intervenors") petitions to intervene and admitted many of their contentions.⁹ The Board, however, denied Connecticut's petition to intervene, finding that both contentions submitted by Connecticut were inadmissible.¹⁰ Additionally, although the Board stated that Connecticut was barred from adopting the contentions of other parties because Connecticut had not submitted an admissible contention, the Board acknowledged that Connecticut could participate in the proceeding as an interested State pursuant to 10 C.F.R. § 2.315(c).¹¹

On September 25, 2008, Connecticut submitted a request to participate as an interested government body in the Indian Point proceeding, identifying 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.¹² On December 18, 2008, the Board authorized Connecticut and four

⁷ See Hudson River Sloop Clearwater, Inc.'s Petition to Intervene and Request for Hearing (Dec. 10, 2007).

⁸ See, e.g., (1) Answer of Entergy Nuclear Operations, Inc. Opposing Petition for Leave to Intervene, Request for Hearing and Contentions of Richard Blumenthal, Attorney General of Connecticut (Jan. 22, 2008); (2) NRC Staff's Response to Petitions for Leave to Intervene Filed by (1) Connecticut Attorney General Richard Blumenthal, (2) Connecticut Residents Opposed to Relicensing of Indian Point and Nancy Burton, (3) Hudson River Sloop Clearwater, Inc., (4) the State of New York, (5) Riverkeeper, Inc., (6) the Town of Cortlandt, and (7) Westchester County (Jan. 22, 2008) ("Staff Response to Initial Petitions").

⁹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

¹⁰ *Id.* at 161-66.

¹¹ *Id.* at 161-62.

¹² 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).

other governmental entities to participate in the proceeding as interested government bodies pursuant to 10 C.F.R. § 2.315(c).¹³

On December 22, 2011, New York, Riverkeeper, and Clearwater filed initial statements of positions along with pre-filed direct testimony and exhibits in this proceeding. On March 30, 2012, the Applicant and the Staff submitted pre-filed direct and rebuttal testimony and exhibits in the proceeding. On June 28, 2012 and June 29, 2012, the Intervenor filed revised statements of position along with their rebuttal testimony and exhibits. On June 28, 2012, Connecticut filed the instant Statement of Position as an interested government entity.

B. Connecticut's Statement of Position

In its statement, Connecticut states that it fully supports the positions taken by the State of New York in the Indian Point proceeding and urges the Board to deny relicensing “until a thorough and complete investigation of environmental impacts has been provided.”¹⁴

Connecticut contends that there are several omissions in the existing environmental review for Indian Point. In this regard, Connecticut asserts that the environmental review fails to evaluate the environmental impacts to the water resources of the State of Connecticut in the event of a severe accident at Indian Point;¹⁵ that there is no federal program to ensure the cleanup of areas contaminated by a severe accident;¹⁶ that an analysis of the consequences of relocating large numbers of persons in the event of an evacuation has not been performed;¹⁷ and that the potential environmental impact of storing 20 years of additional spent nuclear fuel at the Indian

¹³ Board Memorandum and Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) (Dec. 18, 2008) at 2 (unpublished).

¹⁴ Connecticut SOP at 1.

¹⁵ *Id.* at 1, 12.

¹⁶ *Id.* at 1-2, 12-13.

¹⁷ *Id.* at 2, 5-8.

Point site has not been addressed.¹⁸ In addition, Connecticut expresses other concerns regarding the radiological impacts of a severe accident,¹⁹ offsite emergency planning,²⁰ long-term storage of spent fuel at the site,²¹ and the consequences of spent fuel pool fires.²²

C. Staff Response

1. Connecticut's Statement of Position Is Not Relevant To Any Admitted Contentions in this Proceeding.

The Staff recognizes that the State of Connecticut borders the State of New York, with its nearest border about 18 miles from Indian Point, and that major population centers in the State of Connecticut are located within 50 miles of the Indian Point site. However, while the Staff recognizes Connecticut's concerns, the issues raised in its Statement of Position are not relevant to any admitted contention in this proceeding. Accordingly, Connecticut's Statement of Position has no bearing on the issues to be addressed in the upcoming hearings or in the Board's Initial Decision in this proceeding. Further, Connecticut's Statement of Position is not supported by any testimony or evidentiary exhibit, and it therefore should be given no evidentiary consideration.²³

¹⁸ *Id.* at 2, 8-9, 13.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 6-7.

²¹ *Id.* at 8-11.

²² *Id.* at 10.

²³ To the extent that Connecticut asserts that the environmental consequences of 20 more years of spent nuclear fuel in the post-operating period have not been analyzed, its concerns may be relevant to the intervenors' recently-filed joint Contention NYS-39/RK-EC-9/CW-EC-10 concerning the onsite storage of nuclear waste at Indian Point. See State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater's Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning the On-Site Storage of Nuclear Waste at Indian Point (July 8, 2012); State of New York, Riverkeeper, and Clearwater's Joint Motion for Leave to File a New Contention Concerning the On-Site Storage of Nuclear Waste at Indian Point (July 8, 2012). These assertions, however, do not relate to any currently admitted contention in this proceeding.

The Staff notes that in Connecticut's September 25, 2008 request to participate as an interested government entity in this proceeding, Connecticut identified contentions NYS-12, NYS-16, NYS-24,²⁴ NYS-26, Riverkeeper EC-3, and Clearwater EC-3 as admitted contentions on which it intends to participate.²⁵ Connecticut's Statement of Position, however, does not mention any of these admitted contentions, nor does it raise any issues relevant to these admitted contentions or any other admitted contention in this proceeding. Therefore, Connecticut's Statement of Position should not be considered in the Board's resolution of these contentions.

Additionally, Connecticut's assertions that the environmental impacts of evacuating and relocating large numbers of people in the event of a severe accident at Indian Point must be evaluated are not relevant to Clearwater's Contention CW-EC-3A. While Contention CW-EC-3A does relate to the environmental impacts of an evacuation at Indian Point, the scope of this contention is limited to environmental justice populations and other disadvantaged populations.²⁶ Specifically, CW-EC-3A deals with disproportionately high and adverse environmental impacts on low-income and minority populations (including prisoners and special needs populations) in the event of a severe accident at Indian Point, as compared to the impacts on the general population.²⁷ Connecticut makes no mention of low-income or minority

²⁴ A settlement agreement was reached between the parties regarding NYS-24; therefore, NYS-24 is no longer an admitted contention in this proceeding. See Board Order (Approving Settlement of Contention NYS-24) (Jan. 26, 2012).

²⁵ 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).

²⁶ See Board Order (Granting in Part and Denying in Part Applicant's Motions in Limine) at 32 (March 6, 2012); Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) at 56 (July 6, 2011).

²⁷ *Id.*

populations, prisoners, or special needs populations, but rather focuses on the impacts within the State of Connecticut of evacuating the general population. Connecticut's arguments therefore have no bearing on the issues raised by Clearwater in Contention CW-EC-3A (Environmental Justice), and should be excluded from consideration in the Board's resolution of this contention.²⁸

2. Connecticut's Assertions Regarding Emergency Planning
Fall Outside the Scope of this License Renewal Proceeding.

Connecticut makes a number of assertions regarding emergency planning in its Statement of Position, none of which relate to an admitted contention in this license renewal proceeding. For example, Connecticut contends that the "NRC must evaluate the impacts to human health and safety and the environment of an immediate accident or attack on the entire potentially impacted downwind environment, as well as the collateral impacts of the long-term relocation of large numbers of displaced citizens who live in the immediate vicinity of an affected plant, as well as those potential millions more who live within the 50-mile radius, in the event of major downwind contamination."²⁹ Connecticut also asserts that in light of the events at Fukushima, "the 10 kilometer mandatory evacuation zone around Indian Point is a minimum and . . . a much larger zone could be required."³⁰ Additionally, Connecticut alleges that the "existing evacuation plans do not take into account the tendency of people living outside a designated zone to self-evacuate on their own initiative."³¹ None of these concerns fall within the scope of

²⁸ Further, as discussed *infra*, this concern raises an issue relating to emergency planning – an issue which Connecticut had raised in its initial contentions and which the Board rejected as being outside the scope of a license renewal proceeding. See LBP-08-13, 68 NRC at 165-66.

²⁹ Connecticut SOP at 8.

³⁰ *Id.* at 5.

³¹ *Id.* at 5-6.

any admitted contention in this proceeding, and therefore do not require consideration by the Board.

Further, insofar as Connecticut's arguments raise assertions regarding the adequacy of emergency planning, they should be disregarded because, as this Board has explicitly recognized, "the adequacy of emergency planning is outside the scope of license renewal proceedings."³² This is consistent with the Commission's 1991 Statement of Consideration for the rulemaking on license renewal, in which the Commission concluded that "the adequacy of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license."³³ Rather, the adequacy of emergency planning is a safety issue that is evaluated by the Commission on an ongoing basis as part of its oversight of operating reactors under 10 C.F.R. Part 50.³⁴

Connecticut also asserts that "NRC's position to date has been that emergency evacuation and response matters are not properly part of a relicensing proceeding because they are the responsibility of the Federal Emergency Management Agency ("FEMA")."³⁵ Connecticut's statement regarding the "NRC's position" is incorrect. Rather, as discussed above, the Commission has consistently stated that emergency planning falls outside the scope of license renewal because the adequacy of emergency planning is evaluated by the Commission on an ongoing basis as part of its oversight of operating reactors under 10 C.F.R. Part 50.

³² See, e.g., LBP-08-13, 69 NRC at 147-50, 163-66; *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-10-13, 71 NRC 673, 687 (2010); cf. LBP-08-13, 68 NRC at 201.

³³ 56 Fed. Reg. 64,943, 64,967 (Dec. 13, 1991).

³⁴ *Id.* at 64,966-64,967.

³⁵ Connecticut SOP at 6.

Connecticut also asserts that the dangers and potential impacts to Connecticut from an accident or attack at Indian Point resulting in a release are critical because there is no federal first response organization or system in place to address a major incident or release at Indian Point.³⁶ Further, Connecticut states that there is no federal fire department or federal paramedic organization.³⁷ Thus, Connecticut contends that “[s]tate and local officials will be the ones to respond in an emergency” and that “the full financial burden of both responding to the initial incident, and to any evacuation and resettlement of displaced persons will fall on state and local budgets.”³⁸ Connecticut’s assertions should be disregarded because these are emergency planning issues that fall outside the scope of this proceeding.³⁹

CONCLUSION

For the foregoing reasons, the Staff submits that Connecticut’s Statement of Position does not raise an issue that is relevant to any admitted contention in this proceeding, and is unsupported by expert testimony or any other evidence. Connecticut’s Statement of Position therefore should be afforded no consideration in the upcoming evidentiary hearings or the Board’s Initial Decision in this proceeding.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ While not relevant to any contention or issue that the Board must address, the Staff notes that financial assistance in the event of an accident involving a commercial nuclear power plant is available for liability claims, under the Price-Anderson Act. See 42 U.S.C. § 2210. Further, disaster relief is available to State and local governments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act if a nuclear accident is declared an emergency or major disaster by the President. See 42 U.S.C. §§ 5121 *et seq.*

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 30th day of July 2012

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "NRC STAFF'S RESPONSE TO THE STATEMENT OF POSITION OF THE ATTORNEY GENERAL OF CONNECTICUT" dated July 30, 2012, in the above-captioned proceeding has been filed and served by Electronic Information Exchange (EIE), with copies to be served by the EIE system on the following persons, this 30th day of July, 2012.

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