

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman
Dr. Gary S. Arnold
Dr. Thomas J. Hirons

In the Matter of:

ENTERGY NUCLEAR OPERATIONS, INC.

(Palisades Nuclear Plant)

Docket No. 50-255-LA-2

ASLBP No. 15-939-04-LA-BD01

July 9, 2015

ORDER

(Denying Entergy's Motion to Defer Initial Disclosures)

This Board granted a hearing request from Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future – Shoreline Chapter, and the Nuclear Energy Information Service (collectively "Intervenors") on June 18, 2015.¹ The regulatory deadline for initial mandatory disclosures is within 30 days of that decision.²

Entergy Nuclear Operations, Inc. ("Entergy") requests "deferral of the disclosure obligations on the admitted contention until 30 days after Commission action on the planned appeal, or three months from the date of the Board's ruling in LBP-15-20, whichever comes first."³ The company also asks for the same deferral for the Staff's production of the hearing file required by 10 C.F.R. § 2.1203.⁴ Entergy asserts that it "would need to expend considerable resources to work with its contractors and internal personnel to identify and disclose its relevant

¹ LBP-15-20, 81 NRC __, __ (slip op. at 42) (June 18, 2015).

² 10 C.F.R. § 2.336(a).

³ Entergy's Motion to Defer Initial Disclosures at 2 (June 29, 2015).

⁴ Id. at 1.

documents by the 30-day deadline set forth in 10 C.F.R. § 2.336(a),” and that Commission review may render these disclosures unnecessary.⁵ The NRC Staff does not oppose the motion.⁶ The Intervenor’s oppose the request because it would delay resolution of the proceedings.⁷

The Board concludes that, although Entergy has styled its request as a Motion to Defer Initial Disclosures, the substance of Entergy’s motion is a request for a stay pending appeal. That is, Entergy is seeking a stay (i.e., deferral) of its disclosure obligations (and the Staff’s obligations as well) based on its intent to file an appeal of the ruling granting the Intervenor’s request for a hearing. Under 10 C.F.R. § 2.342, a party seeking a stay of the effectiveness of a decision of a presiding officer must comply with various procedural requirements and identify the grounds for the stay, including the likelihood of irreparable injury if a stay is not granted.⁸ The requirements for seeking a stay would be rendered superfluous, however, if a party could avoid compliance simply by styling its request as a motion for a deferral of its obligations arising from the presiding officer’s decision, rather than as a motion for a stay pending appeal of that decision.

Therefore, the Board must determine whether Entergy has justified a stay pending appeal. We conclude that it has failed to do so. Commission precedent is clear that “irreparable injury” is the most important factor a Board must consider before granting a stay

⁵ Id. at 3.

⁶ Id. at 2 n.2.

⁷ Petitioners’ Position Statement on Mandatory Disclosures and Schedule (July 8, 2015).

⁸ 10 C.F.R. § 2.342(b)(2), (e)(2).

pending appeal,⁹ and that the costs of reviewing documents or other ordinary litigation costs are not an irreparable injury.¹⁰ As the Commission has explained:

Interlocutory appeals or petitions to the Commission are not devices for delaying or halting licensing board proceedings. The stringent four-part standard set forth in section 2.788(e) makes it difficult for a party to obtain a stay of any aspect of a Licensing Board proceeding. Therefore, only in unusual cases should the normal discovery and other processes be delayed pending the outcome of an appeal or petition to the Commission.¹¹

Because Entergy bases its motion entirely on ordinary litigation costs, it has not shown irreparable injury. Nor has the company made a showing of any other factor to support its request.¹² And Entergy provides no explanation for its request that the Board defer the Staff's obligation to produce the hearing file. Entergy does not represent the Staff, and the Staff's compliance with its disclosure obligations would impose no burden on Entergy, much less one that would support a stay.

⁹ Sequoyah Fuels Corp. & Gen. Atomics (Gore, Okla. Site), CLI-94-9, 40 NRC 1, 7 (1994).

¹⁰ U.S. Dep't of Energy (High Level Waste Repository), CLI-05-27, 62 NRC 715, 718 (2005) ("The Commission has held expressly and repeatedly that 'litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury.'" (quoting Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-17, 20 NRC 801, 804 (1984))).

¹¹ Gore, CLI-94-9, 40 NRC at 6. In 2004, the NRC moved the stringent four-part standard for a stay from 10 C.F.R. § 2.778(e) to 10 C.F.R. § 2.342(e) without substantive change. Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2225 (Jan. 14, 2004).

¹² The three Licensing Board orders cited by Entergy do not support its motion. In all three, the request to extend the 30-day deadline was unopposed.

Accordingly, the Board denies Entergy's motion. The deadline for initial mandatory disclosures would ordinarily be July 20, 2015.¹³ The Board extends that deadline to July 31, 2015 to take account of the time required to resolve this motion.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA/

Dr. Thomas J. Hirons
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 9, 2015

¹³ 10 C.F.R. §§ 2.306(a), 2.336(a).

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NUCLEAR REGULATORY COMMISSION

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(Entergy))	
)	
(Palisades Nuclear Plant))	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying Entergy's Motion to Defer Initial Disclosures)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Herald M. Speiser _____]
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Dated at Rockville, Maryland
this 9th day of July, 2015