

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
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

January 26, 2012

ORDER

(Approving Settlement of Contention NYS-24)

On December 21, 2011, the State of New York (New York) and Entergy Nuclear Operations, Inc. (Entergy) filed a Joint Motion seeking our approval of a Settlement Agreement and the dismissal of New York State Contention 24 (NYS-24).¹ Attached to the Motion was the proposed Settlement Agreement.² On January 6, 2012, we issued an Order directing New York, inter alia, to submit to the Board the documents that were referred to in the Joint Motion and which, according to New York, alleviated its “concerns about the structural integrity of the containment of Indian Point Units 2 and 3 during the period of extended operations.”³ After reviewing the documents submitted by New York, we convened a teleconference on January

¹ Joint Motion for Approval of Settlement Agreement and Dismissal of New York State Contention 24 (Dec. 21, 2011).

² Settlement Agreement Regarding New York State Contention 24 (Dec. 21, 2011) (attached hereto as Appendix 1).

³ Licensing Board Order (Setting Prehearing Teleconference to Discuss Proposed Settlement of Contention NYS-24) (Jan. 6, 2012) at 2 (unpublished).

18, 2012, to determine whether our approval of the Settlement Agreement would be in the public interest.⁴

Having reviewed the documents provided by New York, discussed the views of the parties during the teleconference, found that the Settlement Agreement meets the requirements of 10 C.F.R. § 2.338(g) and (h), and found that resolution of NYS-24 and the avoidance of unnecessary litigation are in the public interest, we grant the Joint Motion, approve the Settlement Agreement (incorporating it into this Order by reference and attached hereto as Appendix 1),⁵ and dismiss NYS-24 in accordance with 10 C.F.R. § 2.338(i).

In so doing, we note that we reached our finding that this settlement is in the public interest relying, in part, on the representation by Entergy that any attempt to enforce the terms of this settlement agreement, or this Order, in any court will not be subject to objection by Entergy, or by any successor in interest to Entergy, due to a lack of subject matter jurisdiction.⁶

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Kaye D. Lathrop
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 26, 2012

⁴ Tr. at 1058-1100.

⁵ Section 2.338(i) reads, in relevant part, “[i]f approved, the terms of the settlement or compromise must be embodied in a decision or order.”

⁶ Tr. at 1079-82.

APPENDIX 1

Attachment A

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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In re: Docket Nos. 50-247-LR; 50-286-LR

License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. December 21, 2011
-----X

**SETTLEMENT AGREEMENT REGARDING
NEW YORK STATE CONTENTION 24**

This Settlement Agreement is entered into on December 21, 2011, by and between the State of New York and Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (“Entergy”) in accordance with 10 C.F.R. § 2.338(a) and (h),

WHEREAS, on November 30, 2007, the State petitioned to intervene as a party in this Nuclear Regulatory Commission (“NRC”) proceeding concerning whether the operating licenses of the Indian Point Unit 2 and Indian Point Unit 3 nuclear power reactors, located in the Village of Buchanan, New York, should be renewed; and

WHEREAS, in its November 30, 2007 petition the State raised several contentions, including a contention challenging the present structural integrity of the reactor containments of the Indian Point Unit 2 and Indian Point Unit 3 nuclear power reactors based on the original water-cement ratios of the containment concrete, and the adequacy of the measures that Entergy

proposed to employ to ensure the continued structural integrity of these reactor containments during any NRC-approved period of extended operation for Indian Point Units 2 and 3; and

WHEREAS, by Memorandum and Order dated July 31, 2008 (LBP-08-13), the Atomic Safety and Licensing Board (“ASLB”) admitted the State as a party to this proceeding, and admitted as Contention New York State 24 (“NYS-24”) the State’s contention regarding the present structural integrity of the Indian Point Unit 2 and Indian Point Unit 3 reactor containments, and related proposed aging management procedures; and

WHEREAS, as part of mandatory disclosures and in an effort to resolve NYS-24, Entergy has provided the State with certain information concerning the testing of the compression strength of the concrete used to build Indian Point Unit 2’s and Indian Point Unit 3’s reactor containments, and has also provided the State with reports documenting the results of certain ASME Boiler and Pressure Code, Section XI, Division I, Subsection IWL (“ASME Section XI IWL”) inspections intended to ascertain the current condition of the reactor containments, specifically the results of six formal visual inspections of the exterior concrete surfaces of the Indian Point Units 2 and 3 containments; and

WHEREAS, the State has informed Entergy that the information that Entergy has provided about Indian Point Unit 2’s and Indian Point Unit 3’s reactor concrete containments has resolved the State’s concerns about the present structural integrity of the containments; and

WHEREAS, to provide assurance that the Indian Point Unit 2’s and Indian Point Unit 3’s reactor containments continue to perform their intended functions during any period of extended operation, the State has requested that Entergy provide the State copies of the results of future ASME Section XI IWL visual inspections and/or the results of inspections or tests that

might replace, augment, or update these visual inspections of the exterior concrete surfaces of the containments, and Entergy has agreed to provide these reports; and

WHEREAS, the State wishes to obtain the same assurance of the continued structural integrity of Indian Point Unit 2's and Indian Point Unit 3's reactor containments in the event Entergy replaces the visual methods it currently uses to inspect the containments, and Entergy has agreed to provide the State with the results of any such methods, or other means that Entergy might substitute for its current visual inspections of the exterior concrete surfaces of the containments; and

WHEREAS, the State wishes to obtain the same assurance of the continued structural integrity of Indian Point Unit 2's and Indian Point Unit 3's reactor containments even if Entergy ceases to be the operator of either Indian Point Unit 2 or Indian Point Unit 3, or ceases to be the operator of both reactors, and Entergy has agreed to condition the transfer of either Indian Point Unit 2 or Indian Point Unit 3, and/or the transfer of both reactors, upon the agreement of the new operator or operators to assume Entergy's continuing obligation to provide the State with copies of the results of inspections of the exterior concrete surfaces of the containment or containments as specified above.

NOW, THEREFORE, in consideration of the premises and mutual promises herein, the State and Entergy agree as follows:

1. The State agrees that its technical concerns have been resolved regarding the present structural integrity of the Indian Point Unit 2 and Indian Point Unit 3 reactor containments, and the measures that Entergy proposes to employ to ensure the continued structural integrity of the reactor containments during any NRC-approved period of extended

operation. The State therefore withdraws Contention NYS-24 in this relicensing proceeding, subject to the ASLB's consent.

2. The State and Entergy agree to file a joint motion seeking a Consent Order from the ASLB approving this Settlement Agreement and dismissing Contention NYS-24 ("Consent Order").

3. The State and Entergy, the parties to this Settlement Agreement, acknowledge that the NRC and the ASLB members appointed to hear *In re: License Renewal Application Submitted by Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc., Docket Nos. 50-247-LR; 50-286-LR* (ASLBP No. 07-858-03-LR-BD01) have jurisdiction over the parties and over the subject matter of the Settlement Agreement, including jurisdiction to take the actions sought in the Joint Motion for Approval of Settlement Agreement and Dismissal of New York State Contention 24 ("Joint Motion") to which this Settlement Agreement is attached.

4. With regard to NYS-24 in this relicensing proceeding, the parties to it expressly waive any and all further procedural steps before the ASLB and any right to challenge or contest the validity of any order the ASLB enters in accordance with this Settlement Agreement for NYS-24, and waive all rights to seek judicial review or otherwise to contest the validity of any order entered by the ASLB with regard to NYS-24 in this relicensing proceeding so long as such order is fully consistent with each and every provision of this Settlement Agreement.

5. The State and Entergy agree that an order the ASLB enters in accordance with this Settlement Agreement for NYS-24 will have the same force and effect as an order entered after full hearing on the pending relicensing application before the Board.

6. The State and Entergy agree that all matters referred to in this Settlement Agreement and the Joint Motion that were required to be adjudicated in connection with Contention NYS-24 have been resolved by this Settlement Agreement and the ASLB's order in accordance with this Settlement Agreement.


7. This Settlement Agreement will become effective upon issuance of the Consent Order requested by the Joint Motion.

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IN WITNESS WHEREOF, the State of New York and Entergy have executed this Settlement Agreement on the dates indicated below.

State of New York

By: _____

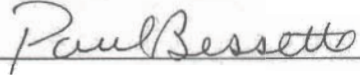

CHARLIE DONALDSON
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Assistant Attorneys General

120 Broadway
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Dated: December 21, 2011

ENTERGY NUCLEAR INDIAN POINT 2, LLC,
ENTERGY NUCLEAR INDIAN POINT 2, LLC, and
ENTERGY NUCLEAR OPERATIONS, INC.

By: _____


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ATTORNEY AND AUTHORIZED
REPRESENTATIVE OF ENTERGY

Dated: December 21, 2011

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 Station,)	
Units 2 and 3))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Approving Settlement of Contention NYS-24) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 50-247-LR and 50-286-LR
ORDER (Approving Settlement of Contention NYS-24)

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ORDER (Approving Settlement of Contention NYS-24)

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 26th day of January 2012