

**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,
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc.

DPR-26, DPR-64

August 20, 2012

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**STATE OF NEW YORK MOTION FOR EXTENSION OF TIME
TO FILE NEW CONTENTIONS, IF ANY,
ON ENTERGY'S ENVIRONMENTAL REPORT "SUPPLEMENT"
REGARDING THE COASTAL ZONE MANAGEMENT ACT**

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INTRODUCTION AND PROCEDURAL BACKGROUND

The State of New York respectfully requests that the Atomic Safety and Licensing Board extend the time by which the State may file a timely contention concerning Entergy's Coastal Zone Management ("CZMA") supplement to its Environmental Report ("ER") to 30 days after the Board rules on Entergy's application for declaratory ruling on CZMA issues. Riverkeeper and Clearwater support this request, while NRC Staff and Entergy oppose it.

On July 24, 2012, Entergy Nuclear Operations, Inc. ("Entergy"), submitted a letter to the NRC Document Control Desk purporting to "supplement" its ER, five years after the document was originally submitted in April of 2007. That letter

updates Entergy's status of compliance with the Coastal Zone Management Act and, to that extent, supplements the LRA. Entergy reassessed the Act's requirements and has determined that IP2 and IP3 already have obtained the necessary consistency reviews from the State of New York and that license renewal will not result in coastal effects that are substantially different than the effects previously reviewed by NYSDOS and other state agencies with jurisdiction under state law to make those determinations. 15 CFR 930.51 (b)(3). From this determination flows the conclusion that IP2 and IP3 require no further consistency review in connection with this proceeding.

Letter, NL-12-107, Fred Dacimo to Nuclear Regulatory Commission, Re: Supplement to License Renewal Application - Compliance with Coastal Zone Management Act, Indian Point Nuclear Generating Unit Nos. 2 & 3, Docket Nos. 50-247 and 50-286, License Nos. DPR-26 and DPR-64 (July 24, 2012) ML12207A122. Subsequently, on July 30, 2012, Entergy filed what it styled as a Motion for Declaratory Order, seeking an order from the Board declaring that Entergy is no longer required to obtain a CZMA certification from the New York State Department of State. As the basis for this ER supplement and subsequent motion, Entergy alleges that (1) two New York State agencies and a New York State public authority were involved with 2000 and 2001

proceedings involving a transfer of ownership of Indian Point facilities and applicable licenses to Entergy and, therefore, the New York State Department of State must have issued coastal zone consistency determinations for those actions, notwithstanding that Entergy has not located or provided such determinations, and (2) those alleged determinations obviate the need for CZMA federal consistency review by the Department of State during relicensing.

The State requested, and the Board granted, an extension of time to respond to Entergy's motion. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Board Order (Granting in Part, the NRC Staff's and New York's Motions for Extension of Time)(Aug. 8, 2012) ("August 8 Order").

On August 13, 2012, NRC Staff issued a Request for Additional Information seeking information from Entergy about CZMA issues.

While the deadline for responses to Entergy's application for a declaratory ruling has been extended, the deadline for parties to file new contentions, if any, based on Entergy's ER supplement concerning CZMA issues is this Thursday, August 23, 2012.

Because the validity of Entergy's ER supplement is currently the subject of pending Requests for Additional Information, because the matter may be resolved via the Motion for Declaratory Order, and because the Board has expressed its preference to hear CZMA-related issues after the upcoming evidentiary hearings, the State respectfully requests that this contention-filing deadline be aligned with the motion timetable. In order to prevent potentially superfluous and duplicative filings on the same issue, the State respectfully requests that the Board's order on the Motion for Declaratory Order serve as the trigger date for new contentions on the CZMA ER supplement, and that the Board issue an order that provides that a contention

on Entergy CZMA ER supplement would be timely if filed within 30 days following the Board's decision on Entergy's Motion for Declaratory Order.

ARGUMENT

GOOD CAUSE SUPPORTS THE STATE'S REQUEST

In its August 8 Order, the Board "consider[ed] the impending deadlines and the hearing dates in October and December" and "extend[ed] the responsive deadline to January 14, 2013, to avoid any potential conflicts with hearing-related matters." August 8 Order at 2. The State submits that the same rationale supports its request for an extension of time to file new contentions, if any, on Entergy's ER supplement.

A. The Same Reasons That Supported the State's Motion to Extend the Response to the Motion for Declaratory Order Apply Here

As the Board acknowledged in its August 8 Order, parties are in the final weeks of preparation for the first phase of the Track One hearing. In the interest of brevity, the State does not recount the multitude of pending deadlines here, but refers the Board to its motion dated August 6, 2012 for their recitation. In addition, the State and presumably other parties are engaged in the myriad logistical tasks necessary to bring witnesses and attorneys and staff to the Tarrytown hearing venue. Under the Board's scheduling order, parties have 30 days from a triggering event to file a new contention for it to be deemed timely. *See* Scheduling Order (July 1, 2010) at 6, ¶ F.2 ("A motion and proposed new contention specified in the preceding paragraph shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available."). As Entergy's ER supplement was submitted July 24, 2012, new contentions, if any,

would be due Thursday, August 23, 2012. However, any new contentions filed prior to the Track One hearing would (1) substantively duplicate arguments parties will make in response to Entergy's motion, and (2) "conflict[] with hearing-related matters." As such, the State submits that no contention should be filed prior to adjudication of the Motion for Declaratory Order.

B. Uncertainty Regarding the Facts Underlying Entergy's ER Supplement Also Necessitate More Time

It appears that NRC Staff has not yet accepted or acted upon Entergy's ER supplement. On August 13, 2012, NRC Staff submitted Requests for Additional Information ("RAIs") to Entergy and stated that "NRC Staff is reviewing the information contained in the supplement and has identified ... areas where additional information is needed to complete the review." *See* Letter, Michael Wentzel, NRC Division of License Renewal, Office of Nuclear Reactor Regulation, to Entergy Vice President, Operations, Re: Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review (TAC Nos. MD5411 And MD5412) (Aug. 13, 2012) ML12221A155. Specifically, Entergy's ER supplement is based upon alleged prior federal consistency determinations for Indian Point Units 2 and 3, but Entergy has not provided the determinations themselves. As such, NRC Staff has requested the underlying determinations, as well as, *inter alia*, "the basis for the statement, in Section 9.3 of Entergy's Environmental report, as revised (Enclosure 1 to NL-12-107), that 'Entergy now believes that the New York Coastal Management Plan also exempts both plants from further consistency review.'" *Id.* at 2. The State believes that the answers to these RAIs will shed needed light on the basis for Entergy's ER supplement and motion, which, along with discussions from the involved State agencies, will inform the State's response to the Motion for Declaratory Order. While parties could submit

contentions following receipt of Entergy's response to the RAIs, the deadline Staff has given Entergy to respond (30 days from August 13) would make new contentions due either just prior to, or during, the Track One hearing. Given the Board's stated preference for hearing CZMA-related issues after the hearing, the State requests that the deadline for new contentions be moved until after the hearing also, but submits that, in the interest of the resources of all parties as well as judicial economy, the Board defer the deadline for filing new contentions, if any, on Entergy's ER supplement until after it adjudicates the Motion for Declaratory Order. The State recognizes that that determination may obviate the need for any new contentions and seeks to avoid duplicative filings.

In consultations among the parties, Entergy and NRC Staff proposed that the contention filing date be extended to January 14, 2013 – the same date that the State's response is due to the Board on Entergy's application for declaratory ruling on the CZMA issues. While the State appreciates that proposal, the State submits that Entergy and Staff's proposal would involve the State (as well as the other parties) in potentially needless and possibly premature litigation efforts (including, without limitation, preparation of contentions, motions for leave, answers, and replies), which could be superseded by the Board's decision on Entergy's application for declaratory ruling. Entergy and Staff's proposal would also enmesh the Board in reviewing potentially superfluous or duplicative pleadings at the same time it was considering the parties' submissions on the Motion for Declaratory Order. Accordingly, the State submits that its request is preferable to Entergy and NRC Staff's proposal.

CONCLUSION

For the above-stated reasons and to further judicial economy, the State respectfully requests that the Board grant its request and extend the time by which the State may file a timely contention concerning Entergy's CZMA supplement to its Environmental Report to 30 days after the Board rules on Entergy's application of declaratory ruling on CZMA issues.

Respectfully submitted,

Signed (electronically) by _____

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Dated: August 20, 2012

Certificate Pursuant to 10 C.F.R. § 2.323

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 scheduling order, I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.

Signed (electronically) by

John Sipos
Assistant Attorney General
August 20, 2012