

**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 24, 2012

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**JOINT MOTION BY
STATE OF NEW YORK, STATE OF CONNECTICUT,
AND RIVERKEEPER TO AMEND THE SCHEDULING ORDER
FOR RESPONSIVE PRE-FILED SUBMISSIONS
IN SUPPORT OF CONTENTION NYS-38/RK-TC-5**

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Intervenors The State of New York and Riverkeeper, and Interested Governmental Entity The State of Connecticut respectfully request that the Atomic Safety and Licensing Board modify its previous scheduling order and expand the time for parties to file replies to Entergy and NRC Staff's recently-filed prefiled submissions – totaling 1,800 pages – on Contention NYS-38/RK-TC-5 from August 30 to October 4, 2012.

Background

Contention NYS-38/RK-TC-5 was presented to the ASLB on September 30, 2011 and accepted by the Board on November 10, 2011. It has seen substantial motion practice since then. Much of the procedural history of Contention NYS-38/RK-TC-5 is summarized in the Joint Statement of Position (Exhibit NYS000371 (June 19, 2012)) and hereby incorporated. Recently, the Board denied an in limine motion against the intervenors' opening pre-filed submissions. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Board Order (Denying Entergy's Motion in Limine Seeking to Exclude Portions of Intervenors' Direct Evidence Addressing Contention NYS-38/RK-TC-5) (Aug 16, 2012).

The Board previously issued a scheduling order wherein the Board provided ten days for intervenors and interested governmental entities to prepare and submit reply submissions to Entergy and NRC Staff's pre-filed submissions. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Board Order (Denying NRC Staff's Motion for Partial Reconsideration and State of New York/Riverkeeper's Cross-Motion to NRC Staff's Motion for Reconsideration) at 7-8 (April 23, 2012) (unpublished). In early July, the State, Riverkeeper, and Entergy agreed to the Staff's request for an extension of time to file its opening submissions from July 19 to August 20. The State, Riverkeeper, and Staff also agreed to Entergy's request that, for the sake of efficiency and uniformity, a single date be established for the filing of both

the Staff's and Entergy's testimony, exhibits, and statements of position on NYS-38/RK-TC-5. *See* NRC Staff's Unopposed Motion for Extension of Time (July 6, 2012) ML12188A745. The Board granted this request. At that time the State identified that it would likely need additional time to review the applicant and Staff's pre-filed submissions, but there was not agreement on a schedule.

On June 19, 2012, the State and Riverkeeper filed their opening pre-filed submissions in support of Contention NYS-38/RK-TC-5. Sixty-one days later, on the afternoon and evening of August 20, 2012, Entergy and NRC Staff filed their pre-filed submissions in opposition Contention NYS-38/RK-TC-5. While the State and Riverkeeper representatives are still in the process of completing an initial review of Entergy and Staff's August 20 filings, they have concluded that they will need more time than that allotted by the Board's April 23, 2012 Scheduling Order to review the August 20 filings and prepare and file replies to those filings.

The State and Riverkeeper submit that the following considerations support the request.

Recent Applicant Disclosures

In recent weeks, Entergy has disclosed various documents as relevant to Contention NYS-38/RK-TC-5. A number of these documents are several years old. The State and Riverkeeper's representatives and experts need time to sufficiently review and consider these newly-disclosed documents before completing rebuttal hearing submissions on Contention NYS-38/RK-TC-5.

In the last 15 days, Entergy had disclosed the following documents as relevant to
Contention NYS-38/RK-TC-5:

Entergy's Public Disclosures (8/6/2012-8/20/2012) Concerning Contention NYS-38/RK-TC-5				
Date of Entergy Disclosure	Log Entry	Document Date	Subject/Description	Contention
8/6/2012	1516	Aug-05	Delabrouille, F. et al., Effect Of The Chromium Content And Strain On The Corrosion Of Nickel Based Alloys In Primary Water Of Pressurized Water Reactors, Proceedings of the 12th International Conference on Environmental Degradation of Materials in Nuclear Power System - Water Reactors	NYS-38/RK-TC-5
8/6/2012	1518	7/12/2012	Letter from A. Macfarlane, Chairwoman, NRC, to E. Markey, U.S. Congressman, "Regulatory Commitments" (ML12108A307)	NYS-38/RK-TC-5
8/6/2012	1519	4/14/2000	NL-00-043, Letter from J. Baumstark, Consolidated Edison Company of New York, to NRC Document Control Desk, "Root Cause Evaluation For Steam Generator Tube Rupture Event of February 15, 2000"	NYS-38/RK-TC-5
8/6/2012	1521	12/3/1999	Safety Evaluation Related to Amendment No. 308 for Oconee Nuclear Station Units 1, 2 and 3 (ML993420021)	NYS-38/RK-TC-5
8/6/2012	1523	10/12/1988	IP3-88-061, Letter from W. A. Josiger, New York Power Authority, to W.T. Russell, NRC, "NRC Bulletin No. 88-08 Thermal Stresses in Piping Connected to Reactor Coolant Systems" (ML100490619)	NYS-38/RK-TC-5, NYS-26B/RK-TC-1B
8/6/2012	1524	6/29/1989	IP3-89-048, Letter from W. A. Josiger, New York Power Authority, to W. T. Russell, NRC, "NRC Bulletin No. 88-08 Thermal Stresses in Piping Connected to Reactor Coolant Systems" (ML100490646)	NYS-38/RK-TC-5, NYS-26B/RK-TC-1B
8/6/2012	1525	4/19/2012	Letter from R. Conte, NRC, to J. Ventosa, Entergy, "Indian Point Nuclear Generating Unit 2 – NRC Inspection Report 05000247/2012008" (ML12110A315)	NYS-38/RK-TC-5
8/6/2012	1530	3/14/2012	Letter from E. Markey, U.S. Congressman, to G. Jaczko, Chair, NRC, "Regulatory Commitments," available at http://markey.house.gov/sites/markey.house.gov/files/2012_0314%20Markey_Commitments%20ltr%20to%20NRC.pdf	NYS-38/RK-TC-5
8/17/2012	1534	Dec-05	Steam Generator Tube Alternate Repair Criteria for the Portion of the Tube Within the Tubesheet at Catawba 2 (ML053630145)	NYS-38/RK-TC-5
8/17/2012	1535	7/24/1998	NRC Information Notice 1998-27, Steam Generator Tube End Cracking (ML031050119)	NYS-38/RK-TC-5
8/17/2012	1536	Mar-03	NUREG-1772, Safety Evaluation Report Related to the License Renewal of McGuire Nuclear Station,	NYS-38/RK-TC-5

			Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2(ML030850251)	
8/17/2012	1537	6/24/2005	Regulatory Perspective on Steam Generator Tube Operating Experience (ML051570192)	NYS-38/RK-TC-5
8/17/2012	1539	4/8/2009	Renewed Facility Operating License for the Oyster Creek Nuclear Generating Station (ML052720204)	NYS-38/RK-TC-5
8/17/2012	1540	3/21/2011	Renewed Facility Operating License for the Vermont Yankee Nuclear Power Station (ML092110054)	NYS-38/RK-TC-5
8/17/2012	1541	5/29/2012	Renewed Facility Operating License for the Pilgrim Nuclear Power Station (ML052720275)	NYS-38/RK-TC-5
8/20/2012	1545	5/22/2012	Letter from A. Cunanan, NRC, to M. Reddemann, Energy Northwest, "Issuance of Renewed Facility Operating License No. NPF-21 for Columbia Generating Station" (ML12089A043)	NYS-38/RK-TC-5

Entergy's Mandatory Disclosures (8/6/2012-8/20/2012)					
Date of Disclosure	Log Entry	Date of Document	Category	Subject/Description	Contention(s)
8/6/2012	9378	2001	Code	ASME Boiler and Pressure Vessel Code, Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components, Article IWA-2000	NYS-38/RK-TC-5
8/6/2012	9379	1/23/2012	Manual	Commitment Management Program, Rev. 5 (EN-LI110)	NYS-38/RK-TC-5
8/6/2012	9387	1/18/2005	Report	Minimum Chromium Content In Nickel-Alloy Weld Overlays to Mitigate PWSCC (SIR-05-007)	NYS-38/RK-TC-5
8/6/2012	9388	11/18/2008	Report	Nordmann, F., Material Aging Institute International Conference on Plants Materials Degradations, "Chemical Conditioning of Light Water Reactors Systems"	NYS-38/RK-TC-5

Entergy's Proprietary Disclosures (8/6/2012-8/20/2012)					
Date of Entergy Disclosure	Log Entry	Date of Document	Subject/Description	Contention(s)	Basis for Proprietary Status
8/6/2012	657	6/7/2012	EPRI, Divider Plate/Tube-To-Tubesheet Weld Crack Propagation Project	NYS-38/RK-TC-5	EPRI Proprietary Information
8/6/2012	658	Jun-12	EPRI, Steam Generator Management Program: Assessment of Channel Head Susceptibility to Primary Water Stress Corrosion Cracking (Product ID: 1025133)	NYS-38/RK-TC-5	EPRI Proprietary Information
8/6/2012	659	12/1/2009	EPRI, Steam Generator Management Program: Improvement Factors for	NYS-38/RK-TC-5	EPRI Proprietary Information

			Pressurized Water Reactor Steam Generator Tube Materials (Product ID: 1019044)		
8/6/2012	660	Jun-05	EPRI, Materials Reliability Program: Management of Thermal Fatigue in Normally Stagnant Non-Isolable Reactor Coolant System Branch Lines (MRP-146) (Product ID: 1011955)	NYS-38/RK-TC-5, NYS-26B/RK-TC-1B	EPRI Proprietary Information
8/17/2012	662	Jun-10	SG-SGMP-10-15, Steam Generator Operational Assessment for Operating Cycles 20 and 21 Indian Point 2	NYS-38/RK-TC-5	Westinghouse Proprietary Information

Applicant and Staff Filings

On August 20, 2012, Entergy and NRC Staff filed their pre-filed submissions in opposition Contention NYS-38/RK-TC-5. Those filings are voluminous; collectively they total approximately 1,800 pages. They include two Statements of Position (including a 48-page submission by Entergy and a 33-page submission by Staff), 210 pages of pre-filed testimony from 9 witnesses collectively (138 pages from Entergy and 78 pages from Staff), and 64 additional exhibits (51 exhibits from Entergy and 13 from Staff). The States and Riverkeeper have determined that they require substantially more time than the 10 days provided in the April 23 Scheduling Order to effectively evaluate the August 20 submissions and prepare responsive documents.

Experts' Limited Availability

One of the State's experts Dr. Richard Lahey is unavailable on August 19-23, due to previous scheduled commitments and will likewise be unavailable 7 of the 19 work days in September. Riverkeeper's expert, Dr. Joram Hopenfeld will be out of town and away from his office from September 6, 2012 to September 20, 2012, and will have limited time and ability to perform the necessary work during that time. In addition, Dr. Hopenfeld is currently out of

town, and is not expected to return until Monday, August 27, 2012; this travel will limit Dr. Hopenfeld's ability to work on rebuttal testimony and complete such work during the current-applicable 10-day timeframe. In addition, another expert for the State, Dr. David Duquette, will be involved in preparations for the start of RPI's fall academic semester during the last week of August and first week of September.

Attorney Availability

The attorney for the State with primary responsibility for Contention NYS-38/RK-TC-5, AAG Sipos, will be out of the office starting on August 23 for six days and again on September 20 for an office obligation. The attorney for Riverkeeper with primary responsibility for this contention, Ms. Brancato, will be out of the office from September 17-21. Responsive submissions will require coordination between Intervenors given the joint nature of the admitted contention. Mr. Sipos and Ms. Brancato will also be involved in numerous activities in preparation for the upcoming evidentiary hearing.

The State of Connecticut also is requesting additional time to review the numerous new filings from Staff and Entergy. Counsel assigned to this case for Connecticut, Mr. Snook, is also responsible for three major federal civil rights actions and wishes to advise the Board that there has been a major agency restructuring which has resulted in his being assigned to the Bureau of Energy and Technology, with significant new responsibilities including reviewing the State's integrated energy resources plan.

Riverkeeper Difficulty in Downloading Documents

Despite diligent efforts, Riverkeeper representatives encountered difficulty in downloading Entergy and Staff's August 20, 2012 pre-filed submissions from the EIE and were unable to fully obtain those documents until the evening of Tuesday, August 21, 2012.

Other Scheduling Issues

The State and Riverkeeper face a number of other scheduling obligations over the next several weeks that also support the request to extend the current deadline of August 30, 2012 for responsive filings on Contention NYS-38/RK-TC-5. These obligations include:

- August 29, 2012: submission of examination plans and proposed questions on several admitted contentions
- August 31, 2012: monthly disclosure updates
- Early September 2012: resolution of parties' consultation on proprietary designations for exhibits presented in connection with Contention NYS-6/7 (and potential motion practice if unresolved issues remain).
- September & October 2012: logistical preparations for evidentiary hearings on various contentions that commence on October 15.
- September 30, 2012: monthly disclosure updates.

Conclusion

Contention NYS-38/RK-TC-5 has progressed rapidly over the past year. Recognizing Applicant and Staff's desire to expedite the consideration of all admitted matters, the States and Riverkeeper submit that they should be provided with a reasonable amount of time to meaningfully review the very recent disclosures and the pre-filed submissions and have a meaningful opportunity to consult with their experts and prepare responsive filings. This requested extension will not delay the proceeding since various contentions, such as Contention NYS-25, will be heard at a later date; Entergy and Westinghouse continue to examine various issues, such as metal fatigue, which may implicate portions of Contentions NYS-26B/RK-TC-1B and NYS-38/RK-TC-5; and Staff will be supplementing its review of various environmental issues.

Accordingly, the State of New York, the State of Connecticut, and Riverkeeper respectfully request that the Board modify its previous scheduling order and expand the time for Intervenors and Interested Governmental Entities to file replies to Entergy and NRC Staff's recently-filed prefiled submissions to October 4, 2012. The State of New York, the State of Connecticut, and Riverkeeper would not oppose a reasonable extension of time for filing Motions in Limine, if any.

Respectfully submitted,

Signed (electronically) by

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August 24, 2012

10 C.F.R. § 2.323 Certification

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 Scheduling Order (at 8-9), I certify that I have made a sincere effort to contact counsel for NRC Staff and Entergy 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.

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August 24, 2012

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

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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. August 24, 2012
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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2012, copies of the State of New York, State of Connecticut, and Riverkeeper Joint Motion to Amend the Scheduling Order for Responsive Pre-filed Submissions in Support of Contention NYS-38/TC-RK-5 were served electronically via the Electronic Information Exchange on the following recipients:

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Dated at New York, New York
this 24th day of August 2012