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December 31, 2007 (4:43pm)

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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD**

Before Administrative Judges:  
Lawrence G. McDade, Chair  
Dr. Richard E. Wardwell  
Dr. Kaye D. Lathrop

In the Matter of	)	Docket Nos. 50-247-LR and 50-286-LR
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	ASLBP No. 07-858-03-LR-BD01
	)	
<u>(Indian Point Nuclear Generating Units 2 and 3)</u>	)	December 31, 2007

**APPLICANT'S UNOPPOSED MOTION FOR CLARIFICATION OR  
EXTENSION OF TIME TO FILE ANSWER TO 10 C.F.R. § 2.335 PETITION OF  
CONNECTICUT RESIDENTS OPPOSED TO RELICENSING OF INDIAN POINT**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.307 and 2.323, Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), applicant in the above-captioned matter, hereby seeks clarification from the Atomic Safety and Licensing Board ("Board") of the time for filing an answer to the 10 C.F.R. § 2.335 petition filed by Nancy Burton, jointly on her own behalf and that of Connecticut Residents Opposed to Relicensing of Indian Point (collectively referred to herein as "CRORIP" or "Petitioners") on December 10, 2007.<sup>1</sup> Alternatively, Entergy requests as an extension of time to file its Answer to the Section 2.335 Petition to and including January 22, 2008; *i.e.*; the same day on which the Entergy and Nuclear Regulatory Commission ("NRC") Staff Answers to CRORIP's December 10, 2008, Petition to Intervene and Request for Hearing are due to be filed. Entergy files this motion in an abundance of caution, insofar as Section 2.335(b) expressly

<sup>1</sup> "Connecticut Residents Opposed to Relicensing of Indian Point and Its Designated Representative's 10 CFR § 2.335 Petition" (Dec. 10, 2007) ("Section 2.335 Petition").

authorizes "any other party" to file a response to the Section 2.335 petition, but does not specify the time for filing such a response. In keeping with Section 2.323(b), counsel for Entergy contacted Ms. Burton, CRORIP's designated representative, by telephone to discuss this Motion, and she indicated that CRORIP does not oppose the Motion. Counsel for Entergy also contacted Sherwin Turk, counsel for the NRC Staff. Mr. Turk indicated that the Staff supports this Motion, but is prepared to file its Answer to the Section 2.335 Petition sooner than January 22, 2008, if the Board so requires.

## **II. BACKGROUND**

On April 23, 2007, as supplemented by letters dated May 3, 2007 and June 21, 2007, Entergy submitted an application to the NRC to renew the Indian Point Unit 2 and Unit 3 operating licenses (License Nos. DPR-26 and DPR-64) for an additional 20 years. The Commission's Hearing Notice stated that any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene within 60 days of the Notice (*i.e.*, October 1, 2007), in accordance with the provisions of 10 C.F.R. § 2.309.<sup>2</sup> On October 1, 2007, the Commission extended the period for filing requests for hearing until November 30, 2007.<sup>3</sup> Subsequently, on November 30, 2007, CRORIP requested that the Board extend the deadline for filing a petition to intervene by ten days. On December 5, 2007, the Board granted CRORIP's request for a 10-day extension to December 10, 2007, to file any petition to intervene and request for hearing.<sup>4</sup>

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<sup>2</sup> 72 Fed. Reg. at 42,134 (Aug. 1, 2007).

<sup>3</sup> 72 Fed. Reg. 55,834 (Oct. 1, 2007).

<sup>4</sup> Licensing Board Order (Granting an Extension of Time to CRORIP Within Which to File Requests for Hearing) (Dec. 5, 2007).

On December 10, 2007, CRORIP filed a Petition to Intervene and Request for Hearing.<sup>5</sup>

On that same date, and in support of its Petition to Intervene, CRORIP also filed a petition, pursuant to 10 C.F.R. § 2.335, for “a waivers [sic], for purposes of the pending relicensing proceedings, of the NRC’s Generic Environmental Impact Statement (“GEIS”) with regard to (a) the exclusion of radiation exposures to the public and occupational radiation exposures during the license renewal term as Category 1 excluded issues which do not require site-specific analysis and (b) its use of the ‘Reference Man’ dose models from 1980.” The Section 2.335 Petition was accompanied by the supporting affidavit of Nancy Burton.

On December 14, 2007, the Board issued a Memorandum stating that it would “not take any action” with regard to CRORIP’s Petition To Intervene, or the Section 2.335 Petition, “unless and until [it had] been advised by the Office of the Secretary that these pleadings have been accepted for filing or docketing.”<sup>6</sup> The Board issued the Memorandum in response to a previous Commission Order. Specifically, in CLI-06-14, the Commission directed “the Office of the Secretary to screen all filings bearing Ms. Burton’s signature and not to accept or docket them unless they meet all procedural requirements” and “to reject summarily any nonconforming pleadings without referring them to the Atomic Safety and Licensing Board Panel or the

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<sup>5</sup> “Connecticut Residents Opposed to Relicensing of Indian Point and Its Designated Representative’s Petition to Intervene and Request for Hearing” (Dec. 10, 2007) (“Petition to Intervene”).

<sup>6</sup> Licensing Board Memorandum (Regarding the Status of the CRORIP Petition to Intervene and Section 2.335 Petition”) (Dec. 14, 2007).

Commission.”<sup>7</sup> By Order dated December 19, 2007,<sup>8</sup> the Secretary for the Commission accepted for docketing the Petition to Intervene and the Section 2.335 Petition.<sup>9</sup>

### III. DISCUSSION

By Order dated November 27, 2007, the Board directed Entergy and the NRC Staff to file their Answers to all timely petitions to intervene on or before January 22, 2008.<sup>10</sup> In accordance with that Order, Entergy intends to file its Answer to CRORIP’s Petition to Intervene on or before January 22, 2008. Because of the concurrent service of CRORIP’s Petition to Intervene and the Section 2.335 Petition, as well as the clear linkage between the two documents, Entergy has viewed them as fundamentally intertwined, and intends to respond to both in a single, integrated Answer. The purpose of this Motion is confirm Entergy’s understanding that its Answer (as well as that of any other party, including the NRC Staff) to CRORIP’s Section 2.335 Petition is due on or before January 22, 2008. Although the Section 2.335 Petition and Petition to Intervene constitute two separate documents, and are labeled accordingly, the former is an integral component of the latter. Stated differently, as CRORIP plainly recognizes, its petition for a waiver, pursuant to 10 C.F.R. § 2.335, is a prerequisite to the Board’s consideration of its single proposed contention. Indeed, the two documents were filed as a single package, and both documents reference the November 30, 2007, Declaration of Joseph J. Mangano.

Accordingly, Entergy submits that, because the two petitions (*i.e.*, the Section 2.335 Petition and the Petition to Intervene) should be considered by the Board in the aggregate, any

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<sup>7</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38-39 (2006).

<sup>8</sup> See Order of the Secretary of the Commission (Dec. 19, 2007).

<sup>9</sup> The Secretary, however, rejected CRORIP’s related “Motion for Leave to Add James A. Himes to CRORIP’S Membership Statement in the Petition to Intervene” due to Ms. Burton’s failure to include the certification required by 10 C.F.R. § 2.323(b).

<sup>10</sup> See Licensing Board Order (Granting an Extension of Time to Clearwater Within Which to File Requests for Hearing) (Nov. 27, 2007) at 3 & n.8.

answers to those petitions logically should be filed *together* on or before January 22, 2008. Establishing a uniform or common deadline for the filing of answers to the Section 2.335 Petition and the Petition to Intervene would simplify the proceeding, promote administrative economy, and avoid potential confusion.<sup>11</sup> Entergy seeks the clarification requested herein because Section 2.335 does not specify a time period within which answers to a petition for waiver must be filed. Furthermore, no previous Board Order in this proceeding identifies a date by which answers to the CRORIP Section 2.335 Petition, in particular, must be filed. In prior NRC proceedings, and even in this proceeding, the presiding Board has established such a deadline by Order.<sup>12</sup>

Alternatively, if the Board does not agree that January 22, 2008, is the proper deadline for filing of answers to the Section 2.335 Petition, then Entergy moves for good cause shown that the Board grant it an extension to and including January 22, 2008, to file such an answer. Such an extension of time would be necessary only if the Board views 10 C.F.R. § 2.323 as the operative regulation for purposes of computing the time to file a response. Section 2.323(b), in particular, provides that a party seeking to file an answer in response to a “motion” must do so within ten days of service of a written motion.<sup>13</sup> Entergy, however, does not believe that the 10-day window applies to a “petition” for a waiver filed under Section 2.335, as is the case here.<sup>14</sup> Significantly, Section

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<sup>11</sup> For example, while Section 2.309(h)(2) expressly authorizes a petitioner to file a reply to any answer to its petition to intervene, Section 2.335 does not entitle a petitioner for a waiver or exception to a regulation to file a reply to any response to the petition. See 10 C.F.R. § 2.335(b)-(d); *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-87-12, 25 NRC 324, 326 (1987).

<sup>12</sup> See, e.g., *Seabrook*, LBP-87-12, 25 NRC at 325; see also *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Licensing Board Order (Authorizing FUSE to Submit a Section 2.335 Petition) (Nov. 21, 2007) (establishing January 14, 2008, as the deadline for filing of Entergy and NRC Staff responses to a FUSE Section 2.335 petition). (Note that the Board’s November 21, 2007, Order preceded its Order of November 27, 2007, which extended the deadline for Entergy and Staff answers to petitions to intervene by 10 days from January 12, 2008, to January 22, 2008.)

<sup>13</sup> If the 10-day window established by Section 2.323(b) applied here, then responses to the CRORIP Section 2.323 Petition arguably would be due today (*i.e.*, 10 days after the Commission’s December 19, 2007, Order docketing the CRORIP Section 2.323 Petition, taking into account that December 29th fell on a Saturday).

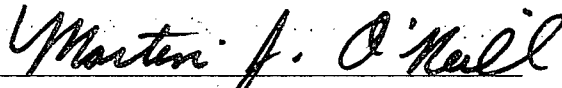
<sup>14</sup> The CRORIP Section 2.335 Petition expressly references 10 C.F.R. § 2.335(b); it contains no references to 10 C.F.R. § 2.323. Notably, while the Secretary rejected CRORIP’s “Motion for Leave to Add James A. Himes to

2.335 contains no cross-references to Section 2.323. Conversely, Section 2.323 does not contain any cross-references to Section 2.335. In any event, even assuming Section 2.323 is applicable in this situation, Entergy nonetheless has shown good cause for an extension of time to and including January 22, 2008. As discussed above, requiring Entergy and the NRC Staff to file their Answers to CRORIP's Section 2.335 Petition in conjunction with their Answers to CRORIP's Petition to Intervene is both logical and conducive to the orderly conduct of this proceeding.

#### IV. CONCLUSION

For the foregoing reasons, the Board should provide clarification that all answers to CRORIP's Section 2.335 Petition are due on or before January 22, 2008. Alternatively, the Board should grant Entergy an extension of time to and including January 22, 2008.

Respectfully submitted,



Kathryn M. Sutton, Esq.

Paul M. Bessette, Esq.

Martin J. O'Neill, Esq.

MORGAN, LEWIS & BOCKIUS, LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Phone: (202) 739-5738

E-mail: [ksutton@morganlewis.com](mailto:ksutton@morganlewis.com)

E-mail: [pbessette@morganlewis.com](mailto:pbessette@morganlewis.com)

E-mail: [martin.o'neill@morganlewis.com](mailto:martin.o'neill@morganlewis.com)

COUNSEL FOR ENTERGY NUCLEAR  
OPERATIONS, INC.

Dated at Washington, District of Columbia  
this 31st day of December 2007

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CRORIP's Membership Statement in the Petition to Intervene" for failure to include the certification required by 10 C.F.R. § 2.323(b), it did not reject the Section 2.335 Petition on the same basis.

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

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ENTERGY NUCLEAR OPERATIONS, INC.	)	ASLBP No. 07-858-03-LR-BD01
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	December 31, 2007
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of "APPLICANT'S UNOPPOSED MOTION FOR CLARIFICATION OR EXTENSION OF TIME TO FILE ANSWER TO 10 C.E.R. § 2.335 PETITION OF CONNECTICUT RESIDENTS OPPOSED TO RELICENSING OF INDIAN POINT" were served this 31st day of December 2007 upon the persons listed below, by first class mail and e-mail as shown below.

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov))

Administrative Judge  
Lawrence G. McDade, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [lgm1@nrc.gov](mailto:lgm1@nrc.gov))

Administrative Judge  
Richard E. Wardwell  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [rew@nrc.gov](mailto:rew@nrc.gov))

Administrative Judge  
Kaye D. Lathrop  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [kdl2@nrc.gov](mailto:kdl2@nrc.gov))

Office of the Secretary \*  
Attn: Docketing and Service  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov))

Zachary S. Khan  
Law Clerk  
Atomic Safety and Licensing Board  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [zxkl@nrc.gov](mailto:zxkl@nrc.gov))

Manna Jo Greene  
Environmental Director  
Hudson River Sloop Clearwater  
112 Market Street  
Poughkeepsie, NY 12601  
(E-mail: [mannajo@clearwater.org](mailto:mannajo@clearwater.org))

Stephen C. Filler, Board Member  
Hudson River Sloop Clearwater, Inc.  
303 South Broadway, Suite 222  
Tarrytown, NY 10591  
(E-mail: [sfiller@nylawline.com](mailto:sfiller@nylawline.com))

Phillip Musegaas, Esq.  
Victor M. Tafur, Esq.  
Riverkeeper, Inc.  
828 South Broadway  
Tarrytown, NY 10591  
(E-mail: [phillip@riverkeeper.org](mailto:phillip@riverkeeper.org))  
(E-mail: [vtafur@riverkeeper.org](mailto:vtafur@riverkeeper.org))

Sherwin E. Turk, Esq.  
Lloyd B. Subin, Esq.  
Beth N. Mizuno, Esq.  
Office of the General Counsel  
Mail Stop -- O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [set@nrc.gov](mailto:set@nrc.gov))  
(E-mail: [lbs3@nrc.gov](mailto:lbs3@nrc.gov))  
(E-mail: [bnml@nrc.gov](mailto:bnml@nrc.gov))

Nancy Burton  
147 Cross Highway  
Redding Ridge, CT 06876  
(E-mail: [NancyBurtonCT@aol.com](mailto:NancyBurtonCT@aol.com))

Justin D. Pruyne, Esq.  
Assistant County Attorney, Litigation Bureau  
of Counsel to Charlene M. Indelicato, Esq.  
Westchester County Attorney  
148 Martine Avenue, 6th Floor  
White Plains, NY 10601  
(E-mail: [jdp3@westchestergov.com](mailto:jdp3@westchestergov.com))

Diane Curran, Esq.  
Harmon, Curran, Spielberg, & Eisenberg,  
L.L.P.  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
(E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com))

Thomas F. Wood, Esq.  
Daniel Riesel, Esq.  
Sive, Paget & Riesel, P.C.  
460 Park Avenue  
New York, NY 10022  
(E-mail: [driesel@sprlaw.com](mailto:driesel@sprlaw.com))

Robert D. Snook, Esq.  
Assistant Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120  
(E-mail: [Robert.Snook@po.state.ct.us](mailto:Robert.Snook@po.state.ct.us))

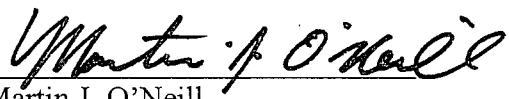
Andrew M. Cuomo, Esq.  
Attorney General of the State of New York  
John J. Sipos, Esq.  
Assistant Attorney General  
The Capitol  
Albany, NY 12224-0341  
(E-mail: [john.sipos@oag.state.ny.us](mailto:john.sipos@oag.state.ny.us))

Joan Leary Matthews, Esq.  
Senior Counsel for Special Projects  
Office of General Counsel  
New York State Department of  
Environmental Conservation  
625 Broadway  
Albany, NY  
(E-mail: [jlmatthe@gw.dec.state.ny.us](mailto:jlmatthe@gw.dec.state.ny.us))

Susan H. Shapiro, Esq.  
21 Perlman Drive  
Spring Valley, NY 10077  
(E-mail: [Palisadesart@aol.com](mailto:Palisadesart@aol.com)  
[mbs@ourrocklandoffice.com](mailto:mbs@ourrocklandoffice.com))

John LeKay  
Heather Ellsworth Burns-DeMelo  
Remy Chevalier  
Bill Thomas  
Belinda J. Jaques  
FUSE USA  
351 Dyckman Street  
Peekskill, NY 10566  
(E-mail: [fuse\\_usa@yahoo.com](mailto:fuse_usa@yahoo.com))

\* Original and 2 copies

  
Martin J. O'Neill  
Counsel for Entergy Nuclear Operations, Inc.