

RAS 15024

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

February 4, 2008 (4:05pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of

ENTERGY NUCLEAR INDIAN POINT 2, LLC,  
ENTERGY NUCLEAR INDIAN POINT 3, LLC, and  
ENTERGY NUCLEAR OPERATIONS, INC.

INDIAN POINT NUCLEAR GENERATING UNITS 2 & 3

Regarding the Renewal of Facility Operating Licenses  
No. DPR-26 and No. DPR-64 for an Additional 20-year Period

Docket Nos.  
50-247-LR & 50-286-LR

ASLBP No.  
07-858-03-LR-BD01

**PETITIONER STATE OF NEW YORK'S MOTION  
FOR EXTENSION OF TIME IN WHICH TO FILE A REPLY**

1. Petitioner State of New York respectfully requests an additional fourteen (14) days in which to file its Reply to the Answers of the applicant and NRC Staff in the above captioned license renewal proceeding. This request is based on the delay in receiving a complete set of the applicant's Answer to New York's Petition to Intervene. This morning, counsel for the New York State Department of Environmental Conservation received a complete set of the documents comprising the applicant's Answer. As of this morning, counsel for the New York Attorney General has yet to receive the applicant's complete submission.

2. On November 30, 2007, the State of New York filed its Notice of Intention to Participate and Petition to Intervene. This Petition set forth thirty-two contentions in a three hundred thirteen page document. It was also accompanied by fourteen declarations and numerous exhibits in support of the Petition. Excluding some exhibits, which were copied onto compact discs, these documents were compiled in three bound volumes.

3. On November 30, 2007, the State of New York served these papers on all parties by overnight courier service (Federal Express). According to Federal Express tracking documents,

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they were delivered the next business day, Monday, December 3, 2007. Also on November 30, 2007, the State sent courtesy copies of the Petition to all parties electronically, but without the declarations and exhibits. The following week, the State sent a courtesy compact disc of its complete filing to all of the parties.

4. By Order dated November 27, 2007, this Board required that all responses to the petitions in this matter be filed on or before January 22, 2008.

5. By Order dated January 2, 2008, this Board required that Replies to those Answers be filed on or before February 8, 2008.

6. According to their Certificates of Service, the applicant and NRC Staff served their Answers to the State's Petition on January 22, 2008. The NRC Staff served all of its papers both electronically and by regular first class mail. Counsel for the State received the electronic version of the NRC Staff's papers just before midnight on January 22, 2008; the State received the paper copies of that submission on Friday, January 25, 2008.

7. The applicant's attorneys served the applicant's Answer upon New York State by regular first class mail. It also transmitted a courtesy copy of the applicant's Answer electronically, without any declarations or exhibits, just before midnight on January 22, 2008. The State Department of Environmental Conservation, however, only received the paper copies of all of the applicant's submission this morning – seven days after service. The New York Attorney General's office has not yet received the applicant's papers.

8. Both of the undersigned attorneys called the applicant's attorneys on January 22, 2008, to inquire about their intended method of service. Kathryn M. Sutton, Esq., and Paul Bessette, Esq., of Morgan, Lewis, and Bockius, LLP, informed us of their plans to serve all parties by regular first class mail. We requested overnight service of the applicant's papers, and we offered

to pay for that expedited service because we were concerned about the delay with service by regular first class mail, given the magnitude of the issues presented in this matter and the fact that we have a very short time period within which to file a Reply. That request was declined.

9. While the State does not question the legal propriety of the method of service chosen by the applicant, the State is concerned about the inordinate delay in its receipt of the paper copies of the applicant's answer.

10. The State has retained a number of experts around the country, and because of the inordinate delay in receiving the applicant's papers, the deadline of February 8<sup>th</sup> is now insufficient time to provide the applicant's voluminous information to our experts for their review, and to draft the Reply based on their review. The applicant chose first class mail despite the State's offer to pay for overnight express delivery of the documents. Moreover, the applicant did not supply the State with a compact disc of the documents, which would further expedite their transmittal to our experts.

11. In response to the January 2<sup>nd</sup> Order of this Board, we carefully scheduled our experts' review of the Answers based on a reasonable time frame for the receipt of service (i.e., by Friday, 1/25/08, of last week at the latest). The delay in service has thwarted this carefully established schedule. In fact, one of our experts is only available to us until the end of this week and will be unavailable all of next week (the week of 2/4/08). He will be available for portions of the following two weeks.

12. Additionally, counsel for the State have been unable to access the NRC's ADAMS document management system over this past weekend and specifically on January 26, 2008.

13. The State recognizes and appreciates that the ASLB and the NRC have been generous in granting extensions in this matter. The State prepared its responsive schedule in

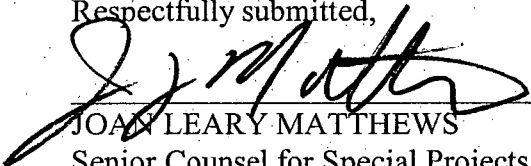
accordance with this Board's January 2<sup>nd</sup> Order. The State intends to file a unified Reply to both the NRC Staff Answer and the applicant's Answer. Because of the importance of this matter and of the State's need to efficiently coordinate its Reply, the State respectfully requests that the ASLB grant its request for a 14-day extension within which to file its Reply. This would mean that the State's Reply would be served on or before Friday, February 22, 2008.

#### CERTIFICATION

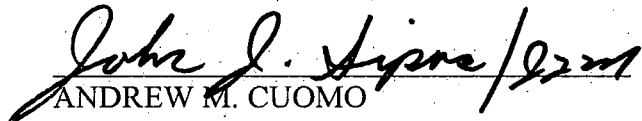
14. The movant, through its undersigned attorneys, certifies pursuant to 10 C.F.R. § 2.323(b) that it has made a sincere effort to contact other parties in the proceeding and to resolve the issues raised in the motion. Specifically, the State's attorneys contacted attorneys for both the applicant and NRC Staff today to obtain their agreement to this request for a fourteen-day extension. The attorneys for both of these parties have agreed to a seven-day extension. While we appreciate counsel's accommodation, seven days only accounts for the delay in the delivery of the applicant's papers by first class mail; it does not account for the resulting scheduling conflicts and counsel's inability to access ADAMS.

Albany, New York  
January 29, 2008

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that on January 29, 2008, copies of the foregoing State of New York's Motion for Extension of Time in Which to File a Reply were served on the following by e-mail and regular first-class mail:

<p>Administrative Judge Lawrence G. McDade, Chair Atomic Safety and Licensing Board Panel Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Also by e-mail: <a href="mailto:LGM1@nrc.gov">LGM1@nrc.gov</a></p>	<p>Administrative Judge Kaye D. Lathrop Atomic Safety and Licensing Board Panel Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Also by e-mail: <a href="mailto:KDL2@nrc.gov">KDL2@nrc.gov</a></p>
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