

January 12, 2008 (8:30am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY 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

January 9, 2009
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**MOTION BY NEW YORK STATE AND RIVERKEEPER
FOR EXTENSION OF TIME
TO FILE TIMELY CONTENTIONS RELATED TO
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**

The NRC Staff served its Draft Supplemental Environmental Impact Statement (DSEIS) on the parties by sending them a copy of a letter it sent to Entergy on December 22, 2008 identifying the electronic location of the DSEIS. Although there has been no order issued in this proceeding regarding the time for filing new contentions based upon newly available information, most ASLBs have adopted schedules specifying that new contentions filed within 30 days of the issuance of major documents, such as the DSEIS or the draft Safety Evaluation Report, will be deemed timely filed within the meaning of 10 C.F.R. § 2.309 (c) and need only meet the requirements of 10 C.F.R. § 2.309(f), particularly § 2.309(f)(2). *See, e.g., In the Matter of Entergy Nuclear Vermont Yankee, LLC*, Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Initial Scheduling Order (November 17, 2006) at 7.

Due to the intervening holidays, the complexity and length of the DSEIS (two volumes consisting of a total of 734 pages), the length of time NRC Staff devoted to preparing the

document, the strict requirements imposed by NRC regulations regarding the filing of contentions in general and the additional burdens imposed with regard to contentions filed based on the DSEIS, and the work load of petitioner-intervenors' technical staff and attorneys, New York State and Riverkeeper respectfully request that the Board approve a filing date of February 27, 2009 for contentions based on the DSEIS and specify that if contentions are filed by that date they will be deemed timely within the meaning of 10 C.F.R. §§ 2.309 (c) and 2.309(f)(2)(iii) and no further showing under those provisions will be necessary.

Several reasons support the request for additional time to file new or amended contentions based on the recently issued DSEIS. First, the draft Supplemental EIS is voluminous – over 700 pages. It covers a multitude of topics that must be reviewed by many technical people within government agencies of the State of New York. Other non-government technical experts involved in this matter are also reviewing the document for the State and Riverkeeper. The DSEIS should not be a mere repetition of Entergy's Environmental Report. In various areas, for example with respect to energy alternatives and alternatives to the existing cooling water system, both of which are areas of substantial concern to New York State and Riverkeeper, Staff has done additional analysis which must be examined to determine what, if any, additional contentions the State and Riverkeeper believe are warranted. Also, many of the DSEIS analyses are based on other documents which, while identified in the DSEIS, are not provided. Many of those documents must be obtained and examined. The requested extension will allow a careful analysis of all of this material, will improve the quality of the contentions that the State and Riverkeeper file, and will facilitate the Board's consideration of the admissibility and merits of any new contentions offered.

Second, the 15 months that NRC Staff devoted to preparing the DSEIS underscores the voluminous nature of the document. The Staff held its NEPA scoping meetings on September 19, 2007 and received most of the written scoping comments in September and October 2007. Furthermore, NRC Staff itself took considerable extra time within which to release the DSEIS – it was originally schedule to be issued in July 2008,¹ but the Staff changed that date and ultimately issued it on December 22, 2008. The additional time taken by NRC Staff supports New York's request for additional time to review the document and formulate appropriate contentions.

Third, the Staff released the DSEIS during the week of Hanukkah and Christmas and the week before New Year's holiday – a time when many of the State's and Riverkeeper's technical reviewers were out of the office. The timing of this release effectively prevented the State and Riverkeeper from beginning reviewing the DSEIS until the week of January 5, 2009. Also, the end of the 30-day period following NRC Staff's release of the DSEIS would fall right after the Martin Luther King holiday.

Fourth, the requested extension would promote the coordination with the timing of the parties' written comments to NRC Staff regarding the DSEIS, thereby promoting efficiency in the parties' review of the document and in the management of the State's and Riverkeeper's responsibilities in the license renewal matter. The NRC Staff has set a schedule for the submission of comments that is different than the schedule for the submission of new or amended contentions provided for in section 2.309(f). To illustrate, the NRC Staff has scheduled

¹See Kimberly Green (NRC) to Michael Balduzzi (Entergy), January 24, 2008, enclosing schedule of review, ML 080230115.

two public meetings on February 12, 2009, when interested persons, including the State of New York and Riverkeeper, may submit oral comments on the record. The NRC Staff has also established March 11, 2009, as the deadline for the submission of written comments. In contrast, various ASLBs have required that new or amended contentions be submitted within 30 days of when new information becomes available. Under this practice, the State of New York and Riverkeeper would have to file any new or amended contentions long before they had fully formulated and vetted their written comments, which are due on March 11, 2009. Moving the two dates (for the filing of written contentions about the DSEIS with the ASLB and the filing of written comments to NRC Staff about the DSEIS) closer together would improve efficiency and coordination of the State's and Riverkeeper's position on the matters raised in the DSEIS.

Fifth, the requested extension will not have a material impact on the schedule for completing these hearings. Although no full schedule has yet been set for the hearings, typically, the adjudicatory hearing is not held until after the final SEIS and final Safety Evaluation Report are released by NRC Staff. *See e.g.* 10 C.F.R. Part 2, Appendix B, Model Milestones for hearing under Subpart L. Extending the time for filing contentions based on the DSEIS will not interfere with either of those dates. In fact, the Staff has already indicated that it has scheduled public meetings to receive public comments on the DSEIS for February 12, 2009 and will receive public comments on the DSEIS until March 11, 2009. *See* Federal Register Notice attached to December 24, 2008 letter to the Board from NRC attorney Sherwin Turk, advising the Board that the DSEIS had been issued. Thus, allowing New York State and Riverkeeper to file any new contentions based on the DSEIS on February 27 will fall well within the Staff's already designated time for receiving comments on the DSEIS.

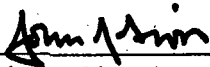
Conclusion

For all of these reasons, the State of New York and Riverkeeper respectfully request an extension to February 27, 2009 in which to file new or amended contentions on the draft Supplemental EIS.

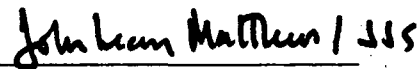
Consultation with Parties Pursuant to 10 C.F.R. § 2.323

Prior to filing this motion, on Friday, January 9, 2009, DEC Associate Commissioner Joan Leary Matthews contacted Paul Bessette, Esq., counsel to Entergy, and Sherwin Turk, Esq., counsel to the NRC Staff, and inquired whether Entergy or NRC Staff objected to a motion that this Board extend the time for filing timely contentions based on the DEIS. Both Mr. Bessette and Mr. Turk expressed no opposition to the State's ability to file the motion, but did oppose the motion on the merits.

Respectfully submitted
January 9, 2009



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CERTIFICATE OF SERVICE

I certify that on January 9, 2009, a joint motion by the State of New York and Riverkeeper, Inc. for an extension of time in which to file additional contentions relating to the draft supplemental environmental impact statement was served on the following judges, law clerks, offices, organizations, attorneys, parties, and/or petitioners via e-mail and first-class U.S. Mail at the e-mail and street addresses that follow:

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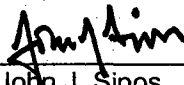
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