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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY LICENSING BOARD

In re: Docket Nos. 50-247-LR; 50-286-LR License Renewal Application Submitted by Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc.	ASLBP No. 07-858-03-LR-BD01 DPR-26, DPR-64 August 13, 2009

MOTION FOR EXTENSION OF TIME FOR THE STATE OF NEW YORK TO SEEK SUMMARY DISPOSITION ON A FUNDAMENTAL ISSUE RAISED BY CONTENTION 16/16A

The State of New York files this motion to request that the time within which it would be required to file a motion for summary disposition on a fundamental issue raised by State Contention 16/16A be extended to no later than August 28, 2009. The issue which New York State believes is now ripe for summary disposition is: whether the NRC Staff's approval of, and reliance on, a straight-line Gaussian air dispersion plume model was scientifically acceptable for the Indian Point site NEPA SAMA analyses in light of the complexities of relevant factors at the site.

On July 27, 2009, the State first learned of a presentation given by the Nuclear Regulatory Commission at the 2009 National Radiological Emergency Planning Conference that addressed the adequacy of different air dispersion models in predicting the geographic scope and concentration of a release of pollutants from a source (ML091050257). NRC Staff did not disclose the presentation to the State as part of Staff's document production in this proceeding under 10 C.F.R. § 2.336(b)(3). The State believes that information contained in the presentation, along with previously available information, demonstrates that a fundamental issue raised by Contention 16/16A is appropriate for summary disposition in the State's favor.

TEMPLATE - SECY 041

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Pursuant to 10 C.F.R. § 2.323, the State's motion for summary disposition on a fundamental issue raised by Contention 16/16A based on its discovery of the NRC presentation "must be made no later than ten (10) days after the occurrence or circumstances from which the motion arises." Upon learning of the document, the State expeditiously reviewed the document and consulted with its air dispersion expert and completed such consultations during the week of August 3.[1] For the following reasons, the State respectfully requests that it be allowed to file its motion for summary disposition on Contention 16/16A by no later than August 28, 2009. The State requests this extension because discovery of the document necessitated review and discussion with the State's expert and review of documents produced by NRC Staff in this proceeding. At this time, preparation of a summary disposition motion cannot be done thoroughly within the ten day deadline for filing a motion due to the limited availability of lawyers and experts, both because of summer schedules and the need for additional internal management review, and deadlines in other matters. The State does not believe that any party or intervenor will be prejudiced by the modest extension requested by the State. On the other hand, the possibility of resolving an issue on summary disposition will streamline the proceedings, allow the Board to focus on matters as to which material disputes remain and justifies the brief extension requested.

[1] Although it appears that the NRC presentation was first posted on ADAMS on April 15, 2009, the ten days to make a motion based on the presentation cannot, in all fairness, begin on that date because (1) it is unreasonable to expect any party to conduct routine scrutiny of ADAMS, which is not organized according to admitted contentions in licensing proceedings; (2) ADAMS has experienced various technical problems in recent months (as has been noted frequently on its "public" webpage); and (3) in this case the State submits that it was reasonably entitled to rely on NRC Staff to produce this document to the intervenors pursuant to the Staff's obligations under 10 C.F.R. § 2.336(b)(3). The State should not be required to check ADAMS for relevant documents that Staff was required to produce. Requiring parties to double-check NRC Staff's production would be time-consuming and burdensome and undermine the Commission's goals when it revamped Part 2 regulations. *See* NRC Statement of Consideration, 69 Fed. Reg. 2182.

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

On Tuesday, August 11, 2009, Assistant Attorney John Sipos held telephone conversations with Entergy's counsel Paul Bessette and subsequently with NRC Staff counsel Sherwin Turk and Entergy's counsel Katherine Sutton, Martin O'Neill, and Mr. Bessette. Mr. Sipos explained the State's concern and position about 10 C.F.R. § 2.323 and the State's belief that it should file a motion for an extension of time. Counsel for Entergy and NRC Staff stated that they believed that a motion by the State was not necessary and that the 10 day provision in 10 C.F.R. § 2.323 did not apply to motions for summary disposition. Counsel for both Entergy and NRC Staff stated that they did not oppose the State's request for additional time.

Conclusion

Since the 10 day limit is a regulatory requirement, the parties cannot stipulate to its non-applicability and thus, notwithstanding that the parties do not oppose the request for extension of time, the State submits that this motion formally requesting additional time is necessary. The State of New York respectfully requests the Board approve a filing date of August 28, 2009 for the State's motion for summary disposition of that portion of Contention 16/16-A alleging that Staff's use of, and Staff's approval of Entergy's use of, a straight-line Gaussian plume model was scientifically erroneous when applied to the complexities of relevant factors present at the Indian Point site.

For all the reasons stated and in the interest of justice, the State of New York requests that its motion for an extension of time be granted.

Respectfully submitted,

August 13, 2009

Janice A. Dean
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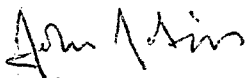
Assistant Attorneys General

by: 
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UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY LICENSING BOARD

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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 13, 2009

CERTIFICATE OF SERVICE

I certify that on August 13, 2009, a motion by the State of New York for an extension of time to seek summary disposition on a fundamental issue raised by Contention 16/16A 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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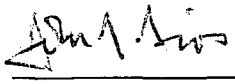

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