

January 21, 2010 (3:10pm)

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

January 21, 2010

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**MOTION BY THE STATE OF NEW YORK  
FOR A SCHEDULE ESTABLISHING FEBRUARY 25, 2010 AS THE DATE  
BY WHICH THE STATE MAY FILE CONTENTIONS RELATED TO  
ENTERGY'S REVISED SUBMISSION CONCERNING  
SEVERE ACCIDENT MITIGATION ALTERNATIVES**

The State of New York respectfully requests that the Atomic Safety and Licensing Board enter a scheduling order granting the State until February 25, 2010 to file additional contentions relating to Entergy's revised submission concerning severe accident mitigation alternatives (SAMA) analyses. The State has discussed this proposed schedule with counsel for Entergy and NRC Staff. Entergy does not oppose the proposed schedule; NRC Staff takes no position on the matter.

**Factual Background**

On December 14, 2009, Entergy sent an email to the Board and the parties notifying them that it had revised the inputs to the MACCS2 computer code and had prepared and submitted a revised SAMA analysis to NRC Staff for its review pursuant to the National Environmental Policy Act (NEPA) and Commission regulations. Attached to the email was a .pdf file of the revised SAMA submission; the State received a paper copy of the revised SAMA submission on

December 21, 2009. Following the revised SAMA submission, the State requested that Entergy provide various documents in various formats to assist the State's review of the submission, and, in turn, Entergy has forwarded documents and files to the State on compact discs. For example, the State sent inquiries to Entergy on December 15 and 30, 2009 and January 4 and 14, 2010 and received documents and files from Entergy on December 21, 2009, and January 7 and 20, 2010.

In this proceeding, the Board has stated that it would follow the requirements of 10 C.F.R. § 2.309(f)(2) and case law regarding additional contentions. *See* ASLB Order, February 4, 2009 at 5, item 9, ML090350569; Transcript of January 14, 2009 Conference ("Tr.") at 797-98 ML090350071. The Board has also recognized that, depending on the particular situation, parties may be accorded some time to review new submissions and that the parties should try to work out scheduling matters among themselves in the first instance. *See* Tr. at 765-68, 769-70.

#### **Reasons Supporting the Proposed Schedule**

The State respectfully submits that several reasons support the request for the proposed schedule to allow the timely filing of contentions concerning the revised SAMA submission. First, the proposed schedule will allow a careful analysis of the submission, will improve the quality of any contentions that the State may file, and may facilitate the Board's consideration of the admissibility and merits of any new contentions offered. *Accord* Tr. at 768 ("Our experience is that well thought out, well written contentions are much easier to adjudicate than contentions that need to be pushed together very quickly at the last moment under a very stringent time frame."). Second, counsel for the State and Entergy have worked promptly and cooperatively to identify, request, and provide documents and files that relate to the revised SAMA submission.

Third, the State received the revised submission in mid-December – a time when reviewers' schedules are limited by various holidays (*e.g.*, Christmas, New Year's, and Martin

Luther King, Jr.). While the State and Entergy continued their communications about the submission and its underlying documents and files during this period, the State's ability to review the submission was somewhat curtailed during this period.

Fourth, it does not appear that the proposed schedule will have a material impact on the schedule for completing the evidentiary hearings in this proceeding. Although no full schedule has yet been set for the hearings, typically, an 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 will not interfere with the hearing date as the final SEIS has not yet been issued.

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

The State of New York has discussed the proposed filing schedule with Entergy and NRC Staff. As noted above, following the revised SAMA submission, the State requested that Entergy provide various documents in various formats to assist the State's review of the submission. In turn, Entergy has forwarded documents and files to the State on compact discs. By way of example, the State sent inquiries to Entergy on December 15 and 30, 2009 and January 4 and 14, 2010 and has received documents and files from Entergy on December 21, 2009, and January 7 and 20, 2010.

On Friday, January 15, 2010, New York State Assistant Attorneys General Janice Dean and John Sipos discussed, among other things, the possibility of an agreed-upon schedule with counsel for Entergy, Kathryn Sutton and Paul Bessette. The State proposed that the schedule provide for the submission of any contentions during the week of February 22, 2010. Ms. Sutton stated that she would relay the question to Entergy. On Wednesday, January 20, 2010, Mr. Sipos and Mr. Bessette discussed the matter again. Mr. Sipos proposed February 25, 2010 as the

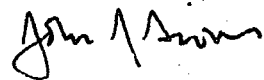
specific date by which it proposed filing any contentions. During that conference, Mr. Bessette indicated that Entergy did not oppose the schedule proposed by the State.

On Friday, January 15, 2010, New York State Assistant Attorney General John Sipos contacted NRC Staff counsel, Sherwin Turk, and, among other things, informed him that the State wished to discuss the possibility of an agreed-upon schedule concerning the revised SAMA submission. The State indicated that it sought an agreed-upon schedule that would provide for the filing of contentions during the week of February 22, 2010. On Wednesday, January 20, 2010, Mr. Sipos contacted Mr. Turk and discussed the matter again. During that conference, Mr. Turk stated that NRC Staff took no position on the State's proposal and could not comment on it in advance of knowing the substance of any contention that the State might file.

#### **Conclusion**

For the above reasons, the State of New York respectfully requests that the Board issue an order approving a filing date of February 25, 2010 for new or amended contentions based on the revised SAMA submission.

Respectfully submitted,



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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD**

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2010, copies of the State of New York's motion for a schedule establishing February 25, 2010 as the date by which the State may file contentions related to Entergy's revised submission concerning severe accident mitigation alternatives, were served upon the following persons via U.S. Mail and e-mail at the following addresses:

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Dated at Albany, New York  
this 21st day of January 2010