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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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 February 22, 2010

MOTION BY THE STATE OF NEW YORK REQUESTING A TWO-WEEK EXTENSION OF THE SCHEDULE WITHIN 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 extending the time for the State to file additional contentions relating to Entergy's revised submission concerning severe accident mitigation alternatives (SAMA) analyses until March 11, 2010. This represents a two-week extension of the current schedule established by the Board's January 22, 2010 order that, in turn, granted the State's January 15, 2010 motion that sought to establish February 25, 2010 as the date by which such filing was due. The State has discussed this proposed requested extension with counsel for Entergy and NRC Staff. Entergy "reserves judgment" on the request pending its review of the motion. At this time, 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

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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. As previously noted in the State's January 15, 2010 motion, 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.

Since the State filed its January 15 motion, certain events have occurred which support the requested two-week extension. On February 4, 2010, NRC Staff informed the Board and the parties that Staff was extending the planned completion date of the Final Supplemental Environmental Impact Statement (FSEIS) from February 12, 2010 to May 31, 2010. In a communication to Entergy, NRC Staff stated that the FSEIS extension was due, in part, to "new information that Entergy Nuclear Operations, Inc. has submitted to the U.S. Nuclear Regulatory Commission, including . . . *revised severe accident mitigation alternative analyses*." *See* February 2, 2010 letter from D. Wrona, NRC Staff, to J. Pollock, Entergy Nuclear Operations, Inc., ML100110063.

On February 8, 2010, the State requested additional information from Entergy that may have been reviewed in preparing the revised SAMA submission; Entergy responded to the State's request on February 16, 2010, with a compact disc arriving on February 17. This information included, among other things, four years of meteorological data for the years 2001 through 2004.

Also on February 17, 2010, the State received the MACCS2 computer code from NRC Staff.[1]

The requested two-week extension will allow the State and its experts necessary time to review the information received last week and to evaluate the revised SAMA submission. In this proceeding, the Board has 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* Transcript of January 14, 2009 Conference ("Tr.") at 765-68, 769-70, ML090350071.

Reasons Supporting the Proposed Schedule

The State respectfully submits that several reasons support the request for the proposed schedule extension to allow the timely filing of contentions concerning the revised SAMA submission. First, the extension will allow a careful analysis of the recently received information in conjunction with the revised SAMA 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. Additionally, the State and NRC Staff resolved the dispute concerning the production of the MACCS2 code, which plays a role in the SAMA analysis. NRC delivered the MACCS2

[1] The State previously had filed a motion to compel NRC Staff to produce the MACCS2 computer code; on January 27, 2010, NRC Staff agreed to produce the code absent any fee. Shipment of the computer code to the State was delayed by winter storms in the Washington D.C. area in February 2010.

computer code to the State on Wednesday, February 17, 2010 – five days ago.

Third, it does not appear that the proposed schedule will have a material impact on the schedule for completing the evidentiary hearings in this proceeding. On February 4, 2010, NRC Staff informed the Board and the parties that Staff was extending the planned completion date of the FSEIS from mid-February 2010 to May 31, 2010 – a three-and-a-half-month extension. Staff stated that the extension was necessitated by the receipt of additional information from Entergy, including Entergy's December 2009 revised SAMA analysis. Thus, NRC Staff also has allocated additional time to review the revised SAMA analysis. 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 FSEIS has not yet been issued.

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

Counsel for the State of New York has discussed the proposed extension with counsel for Entergy and NRC Staff.

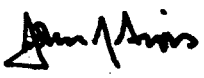
On Saturday, February 20, 2010, Assistant Attorney General Sipos and Paul Bessette, counsel for Entergy, communicated about the State's request. On February 22, 2010, AAG Sipos and Entergy's counsel, Kathryn Sutton, discussed the request. Entergy "reserves judgment" on the State's request pending Entergy's review of the motion.

On February 20, 2010, AAG Sipos also sent an email to Sherwin Turk, counsel for NRC Staff, about the State's request. On February 22, 2010, AAG Sipos telephoned Mr. Turk and discussed the State's request. NRC Staff "takes no position at this time, but will state [its] position promptly in response to the State's motion."

Conclusion

For the above reasons, the State of New York respectfully requests that the Board issue an order approving a two-week extension of the filing date for new or amended contentions based on the revised SAMA submission to March 11, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2010, copies of the State of New York's motion requesting a two-week extension of the schedule within 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 22nd day of February 2010