

RAS E-336

February 24, 2010 (8:30am)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	
)	
(Indian Point Nuclear Generating Units 2 and 3))	February 23, 2010
)	

**ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. TO
NEW YORK STATE'S MOTION FOR EXTENSION OF TIME**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(c), Entergy Nuclear Operations, Inc. ("Entergy") responds to the "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" ("Motion"), filed on February 22, 2010. In its Motion, New York State ("NYS") requests that the Atomic Safety and Licensing Board ("Board") approve a *second* extension of time, until March 11, 2010, to file contentions related to Entergy's severe accident mitigation alternative ("SAMA") reanalysis, which Entergy served electronically on NYS and the other parties on December 14, 2009.¹

As NYS correctly observes, the parties have worked promptly and cooperatively to identify and provide documents and files that relate to the revised SAMA submission. It was in this spirit of cooperation that Entergy agreed to NYS's *first* request to extend the deadline for

¹ Motion at 1 (referring to Letter from Paul Bessette, Counsel for Entergy, to Licensing Board (Dec. 14, 2009), which included as an Attachment, Letter from Fred Dacimo, Entergy, to NRC Document Control Desk (Dec. 11, 2009), Enclosure, License Renewal Application—SAMA Reanalysis Using Alternative Meteorological Tower Data ("SAMA Reanalysis")).

TEMPLATE = SECT 041

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additional contentions related to Entergy's SAMA Reanalysis until February 25, 2010.² As discussed further below, however, NYS has not adequately demonstrated why it needs yet more time—a total of almost 3 months—to file contentions related to Entergy's SAMA Reanalysis. Therefore, Entergy opposes NYS's Motion for the requested extension of time.

II. ARGUMENT

In accordance with 10 C.F.R. § 2.307(a), the Board may grant extensions of time only for “good cause” shown. As Entergy has consistently emphasized in responding to NYS's several prior repeated requests for extensions of time, the Commission has interpreted “good cause” to require a showing of “unavoidable and extreme circumstances.”³ The instant Motion, however, falls far short of meeting the “good cause” standard.

In support of its requests, NYS indicates an extension is needed, in principal part, because it only received a copy of the MACCS2 computer code from the NRC Staff on February 17th and meteorological data for the years 2001 through 2004 from Entergy on February 16th.⁴ Neither of these occurrences supports another extension of time.

First, NYS's efforts to obtain the MACCS2 code have been ongoing for over a year in connection with already-admitted contentions.⁵ Therefore, whatever the reason for the delayed

² See Board Order (Granting New York's Motion To Establish February 25, 2010 As The Date By Which New York May File Contentions Related To Entergy's Revised Submission Concerning Severe Accident Mitigation Alternatives) (Jan. 22, 2010).

³ See *Balt. Gas and Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342-43 (1998) (holding that “construction of ‘good cause’ to require a showing of ‘unavoidable and extreme circumstances’ constitutes a reasonable means of avoiding undue delay in this important license renewal proceeding”); *Hydro Res., Inc.* (2929 Coors Road Suite 101, Albuquerque, NM 87210), CLI-99-1, 49 NRC 1, 3 n.2 (1999) (“We caution all parties in this case, however, to pay heed to the guidance in our policy statement that ordinarily only ‘unavoidable and extreme circumstances’ provide sufficient cause to extend filing deadlines.”); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). See also Entergy's Answer to Joint Motion for Extension of Time to File Amended/New Contentions Based on Draft Safety Evaluation Report (Feb. 10, 2009) (discussing the “good cause” standard and case law applying that standard).

⁴ Motion at 2-3.

⁵ See Board Memorandum and (Summarizing Pre-Hearing Conference) at 4-5 (Feb. 4, 2009).

access to the MACCS2 code, it has nothing to do with Entergy's SAMA Reanalysis, and certainly does not constitute good cause for yet another extension of time in which to file amended or new contentions. Indeed, nowhere in its Motion does NYS directly or clearly explain *why* access to the MACCS2 code is necessary to its ability to file such contentions.

Second, NYS has had Entergy's SAMA Reanalysis, which it apparently wishes to challenge, since mid-December 2009. NYS has requested, at various times over the last two months, electronic versions of certain detailed input and output data used by Entergy to prepare the SAMA Reanalysis—requests to which Entergy has promptly responded—presumably to perform its own independent or confirmatory analyses. As the Board previously noted, however, “a petitioner is not required to redo SAMA analyses in order to raise a material issue.”⁶ Therefore, any intention by NYS to “redo” Entergy's SAMA analyses is not a sufficient basis for what amounts to almost 3 months to submit amended or new contentions.

Third and finally, NYS states that “it does not appear that the proposed schedule will have a material impact on the schedule for completing the evidentiary hearings in this proceeding.”⁷ NYS, however, fails to recognize the potential implications of yet another extension of time. Any additional extensions of time for submission of new contentions may adversely impact Entergy's and the NRC Staff's preparation for hearing, particularly given the delayed issuance of the NRC Staff's Final Supplemental Environmental Impact Statement

⁶ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 113 (2008).

⁷ Motion at 4.

("FSEIS").⁸ Thus, in the event that the Board grants NYS's Motion, Entergy respectfully suggests that any further delays will have a material impact on this proceeding.⁹

With regard to the hearing schedule, NYS notes in its Motion that the NRC plans to publish the Final Environmental Impact Statement by May 31, 2010. With this final schedule in place, Entergy respectfully suggests that a status conference to discuss the schedule for conduct of the evidentiary hearing may be appropriate at this time.

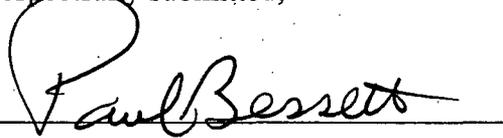
III. CONCLUSION

For the foregoing reasons, Entergy respectfully submits that NYS's Motion fails to demonstrate "unavoidable and extreme circumstances" for the requested extension of time. Accordingly, it should be denied.

⁸ In this vein, NYS cites the NRC Staff's allotment of "additional time to review the revised SAMA reanalysis" in support of its Motion. Motion at 2, 4. It is unclear how the Staff's decision to allow additional time for completing any necessary technical/environmental reviews in support of the FSEIS is relevant to, much less good cause for, NYS's instant time extension request. NYS's Motion offers no insights.

⁹ The Board has indicated that "as we get closer to the hearing, these times will be adhered to" and "that in the future, and very specifically as we get closer towards the hearing, that the motions [for extension of time] will [not] be treated in the same way." See Tr. at 778-79 (Aug. 24, 2009)

Respectfully submitted,



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Dated in Washington, D.C.
this 23rd day of February 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos.	50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC.)		50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))		
		February 23, 2010

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Answer of Entergy Nuclear Operations, Inc. to New York State's Motion for Extension of Time," dated February 23, 2010, were served this 23rd day of February, 2010 upon the persons listed below, by first class mail and e-mail as shown below.

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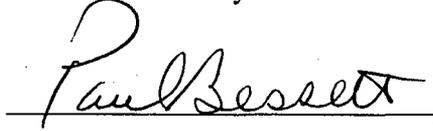
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A handwritten signature in cursive script, reading "Paul Besette", is written over a horizontal line.

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