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**UNITED STATES OF AMERICA
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 and 50-286-LR
License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01
Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and May 24, 2010
Entergy Nuclear Operations, Inc.
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**JOINT RESPONSE OF
THE STATE OF NEW YORK, THE STATE OF CONNECTICUT, RIVERKEEPER,
AND HUDSON RIVER SLOOP CLEARWATER
TO NRC STAFF'S MOTION
FOR LEAVE TO PROPOSE TRANSCRIPT CORRECTIONS
AND FOR THE SCHEDULING OF A PREHEARING TELEPHONE CONFERENCE**

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The State of New York, the State of Connecticut, Riverkeeper, Inc., and the Hudson River Sloop Clearwater, Inc. (“intervenors”) respectfully submit this joint response to the May 14, 2010 Motion filed by NRC Staff that makes two requests.

The State and intervenors do not oppose Staff’s first request, leave to file corrections to the transcript of the April 19, 2010 telephone conference with the Atomic Safety and Licensing Board by May 21, 2010.¹ Following receipt of Staff’s motion, New York, Entergy, and intervenors have worked collaboratively to prepare a single, joint chart containing suggested corrections to the April 19 transcript for review by the ASLB. The proposed joint corrections were submitted on May 21 to the ASLB.

Turning to Staff’s second request, the State and intervenors take no position on whether, or not, the ASLB should hold a second conference concerning pre-hearing scheduling issues. The answer to Staff’s request lies ultimately within the ASLB’s prerogative. The State notes that the participants have had an opportunity to express their positions on such scheduling issues. In addition, consistent with its communication with Staff during the § 2.323 consultation process that preceded the filing of the Staff’s pending motion,² the State respectfully requests that should the ASLB grant the Staff’s request and convene another conference, the Staff should first be required to set forth, in writing, its substantive concerns about the State’s and intervenors’

¹ The State of New York notes that the transcript did not become available to the public until May 4, 2010, the day the parties filed their written submission concerning scheduling matters. *See* ADAMS ML101160416 (reflecting May 4, 2010 ADAMS docketing date). Should the Board accept the suggested corrections, the State respectfully suggests that NRC request the reporter file a new and corrected version of the April 19 transcript.

² Staff initiated the 10 C.F.R. § 2.323 consultation process at 2:28 PM on Friday, May 14, 2010 and filed its motion at 6:49PM the same day. The description of the § 2.323 consultation process contained at pages 3-4 of the Staff’s May 14 motion should be updated to reflect that Connecticut agreed with the New York’s position. Connecticut communicated its position at 8:30AM on Monday, May 17.

scheduling proposal and that the State and other intervenors should be provided an opportunity to respond before any such conference.³ Alternatively, in place of convening another conference,

the ASLB could authorize NRC Staff simply to set forth in writing its substantive concerns about the State's and intervenors' scheduling proposal and permit the State and other intervenors an opportunity to file a written response to the Staff's submission.

FACTUAL BACKGROUND

The State and other intervenors provide the following background that the ASLB may find relevant in ruling on the Staff's motion.

After consultation with the parties, on April 13, 2010 the Board scheduled the telephonic scheduling conference that was held on April 19, 2010. April 13, 2010 Order (Scheduling Telephonic Status Conference). The Order identified the following topics for discussion that bear directly on the issue of the future schedule for various filings:

- (3) solicit the views of the participants regarding the establishment of deadlines for the submission of Motions for Summary Disposition;
- (4) solicit the views of the participants regarding the time that will be needed between the publication of the FEIS and the commencement of the hearing and an exposition of the events that must occur during that time period;
- (5) solicit the views of the participants regarding the scheduling of the submission of statements of position, direct written testimony, exhibits, rebuttal statements of position, rebuttal testimony, and proposed cross-examination;
- (6) solicit the views of the participants regarding the establishment of a deadline for any motion to proceed pursuant to subpart G rather than subpart L;
- (7) solicit the views of the participants regarding any procedures that will promote the fair and expeditious resolution of this proceeding;

³ Entergy already has commented on the scheduling proposals made by the State of New York and other participants. See May 4, 2010 letter from Attorney Paul Bessette to ASLB.

Id. at 2. During the telephonic scheduling conference the Board accorded the parties ample opportunity to discuss their views on these matters. During the telephonic conference, there was some discussion of the issue of filing of statements of position. *See* Transcript (uncorrected) of 4/19/10 Telephonic Conference at pp. 810-815. After the Board decided to allow the parties a period of time to see if they could work out a proposed schedule for filings and a date for filing either a single mutually agreed-upon schedule, or multiple individual schedules, NRC Staff Counsel Mr. Sherwin Turk stated:

I think it's a great idea that the parties talk amongst themselves. Maybe we can come up with a joint written proposal. But I would say at this point may be it's better that we just submit in writing, jointly, if possible, otherwise separately. And then based on that you could determine whether there's a need for a conference call or what the issues should be to address in that conference call. I would go with your original suggestion which is approximately in two weeks, by May 3rd, the parties submit either jointly or separately their positions.

Id. at 822. At the State's request, the date was changed to May 4, 2010, and Judge Wardwell sought a clarification of exactly what the parties would be filing on May 4th:

Would everyone clarify what we're getting on May 4th because I'm getting a little confused here.

As I understood what I heard, is that parties are going to talk among themselves as convenient or as logistics allow and *then on May 4th there are going to be written submissions on a suggested scheduling order talking about the various items we just have postponed discussion of.* Is that a fair assessment of what I just heard?

CHAIRMAN McDADE: That's your understanding Mr. Turk?

MR. TURK: Yes, Your Honor.

CHAIRMAN McDADE: Mr. Bessette?

MR. BESSETTE: Yes, Your Honor.

CHAIRMAN McDADE: Mr. Sipos?

MR. SIPOS: Yes . . .

Id. at 825-26 (emphasis added).

Subsequently Entergy, NRC Staff, the State, and other participants held a number of bilateral and multilateral teleconferences to discuss their respective positions on the schedule. The participants invested substantial efforts in those discussions and in the preparation of the May 4 submissions. NRC Staff proposed schedules which the participants reviewed and discussed; Entergy and New York proposed modifications to the “single track” schedule, and the participants also reviewed and discussed those modifications. During these conversations and in its proposed schedule, the State noted that fairness and efficiency would be promoted if the applicant and the Staff substantively address the merits of the remaining admitted contentions before an intervenor or other party expended resources preparing pre-hearing testimony. Absent such a “joinder of issue” on the admitted contentions, the State observed the parties might continue on in this proceeding like “two ships passing in the night.” Consistent with this reasoning the State proposed in its alternative schedule that either opposing parties file a document setting forth their substantive position regarding the contentions the ASLB admitted at some time before the proponent of a contention filed direct testimony or, alternatively, if the first time the proponent of the contention would learn of the position of the opponents was at the time that the opponents filed their pre-filed testimony, then the proponent of the contention should have 60 days, not 30 days, to file rebuttal testimony to enable it to have time to fully consider the position of the opponents.

When Entergy and Staff indicated they did not agree with the State’s proposal and were unable to reconcile all their differences with the State regarding the proposed schedule, it was agreed to file a single proposal that identified the points of disagreement, to briefly express the bases for the disagreement in the proposed schedule and to supplement that statement, if any

party wished, with a letter, also to be filed on May 4. The State of New York, along with the State of Connecticut, the Town of Cortlandt, Riverkeeper, and Clearwater filed a letter. Entergy filed a letter. NRC Staff did not.

**IF THE ASLB WISHES TO ENTERTAIN ADDITIONAL INFORMATION
FROM NRC STAFF, THE ASLB SHOULD REQUIRE STAFF TO SET FORTH
STAFF'S POSITION IN WRITING
AND PERMIT INTERVENORS TO RESPOND**

NRC Staff asserts that the State's and intervenors' proposal that a position statement be filed by opponents of admitted contentions before the proponents were to file direct testimony would "create substantial inequities and inefficiencies in the conduct of this proceeding." NRC Staff Motion at 2. However, Staff provides nothing to support this assertion in its motion, has offered no reasoning during the § 2.323 consultation process that would support this assertion, and failed to file a letter on May 4 expressing its views on that subject. Unless the Staff is required to set forth its position in writing, the State, other intervenors, and the ASLB will be unable to understand the rationale underling the Staff's conclusory statement. Thus, should the ASLB determine to give Staff another opportunity to explain its position, the State respectfully suggests the ASLB: (1) direct Staff to promptly provide its position in writing, and (2) provide intervenors and interested governmental entities a corresponding opportunity to respond.⁴

As noted above, all parties, including NRC Staff, had ample opportunity to provide the Board with their views on the proposed schedule. As Judge Wardwell clarified, and as all parties (including NRC Staff) agreed, the filing on May 4th was to include a proposed schedule and

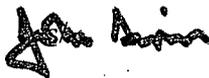
⁴ Based on its May 4th letter, presumably Entergy supports the Staff on this issue, and therefore no reason exists for Entergy to file a further statement. However, because intervenors are unaware of the rationale behind Staff's position that the proposal would "create substantial inequities and inefficiencies in the conduct of this proceeding," and thus could not address it in their May 4th letter, the State and intervenors should be allowed to file a response. The State

“written submissions.” Transcript (uncorrected) of 4/19/10 Telephonic Conference at p. 826.

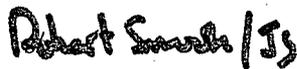
The ASLB may wish to entertain Staff’s views; however, if that is the case, Staff should be required to do so in writing. In addition, the State of New York, the State of Connecticut, Riverkeeper, and Clearwater should be afforded a reasonable opportunity to respond in writing.

NRC Staff also asserts in its motion that the State’s and intervenors’ May 4 submission inaccurately summarized NRC Staff opposition to the State’s and intervenors’ scheduling proposal. *See* NRC Staff Motion at 3, ¶ 4. It is difficult to see what basis exists for that assertion. The State did no more than identify the fact that NRC Staff opposition existed and that it reflected, in part, a concern, expressed in Entergy’s May 4 letter (p. 3), that filing of statements of position by NRC Staff and Entergy could trigger new contentions. Since NRC Staff and Entergy expressed that position during the multilateral conferences, the State cannot discern how NRC Staff was harmed by the State and intervenors noting Staff’s position in their May 4 letter.

Respectfully submitted,



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May 24, 2010

proposes that such response be due 5 business days after receipt of the Staff filing.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In re:

Docket Nos. 50-247-LR and 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

May 24, 2010
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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2010, copies of the Joint Response to NRC Staff's motion for a scheduling conference and to correct a transcript were served by the State of New York on behalf of itself, the State of Connecticut, Riverkeeper, and Clearwater upon the following persons via U.S. Mail and e-mail at the following addresses:

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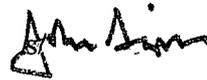
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