

RASE-364

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
TEL: 202.739.3000
FAX: 202.739.3001
eFax: 877.432.9652
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

**DOCKETED
USNRC**

June 17, 2010 (8:30a.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Kathryn M. Sutton
Partner
202.739.5738
ksutton@morganlewis.com

Paul M. Bessette
Partner
202.739.5796
pbessette@morganlewis.com

June 16, 2010

Lawrence G. McDade, Chairman
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Docket: *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating
Units 2 and 3), Docket Nos. 50-247-LR and 50-286-LR*

RE: **Entergy's Comments on the Draft Scheduling Order
for the IPEC License Renewal Proceeding**

Dear Administrative Judges:

On June 2, 2010, the Atomic Safety and Licensing Board ("Board") issued a Draft Scheduling Order for review and comment by the parties in the above-captioned proceeding. In accordance with that Order, Entergy Nuclear Operations, Inc. ("Entergy") is providing the following comments on the schedule and procedures proposed by the Board to govern the remainder of this proceeding.

As an initial matter, Entergy has reviewed the Draft Scheduling Order and, subject to the suggestions offered below, believes it is comprehensive and fair to all involved parties and interested governmental entities. Given the scope of the proceeding and the extensive time the parties have had to date to prepare for the hearing, the timeframes set forth in the proposed schedule are both reasonable and appropriate. Furthermore, the schedule is generally consistent

TEMPLATE = SECY 043

DS 03

Lawrence G. McDade, Chairman
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop
June 16, 2010
Page 2 of 3

with scheduling orders that have been issued in other contested proceedings. *See, e.g., Tenn. Valley Auth. (Watts Bar Unit 2), Licensing Board Scheduling Order, Docket Nos. 50-391-OL (unpublished) (May 26, 2010).* With that introduction, Entergy offers the following suggested changes to the Draft Scheduling Order.

- Insofar as the parties are required to immediately update mandatory disclosures with newly acquired or developed information until the Board has issued its initial decision in this proceeding, Entergy proposes that such updated disclosures be limited to new information that is both relevant and material to admitted contentions (*i.e.*, new information that clearly could affect the outcome of the proceeding with respect to the subject contention).
- Entergy proposes that “pleadings filed in this proceeding” be added to the list of documents listed in section M.2 that need not be attached to a motion or pleading. Instead, the parties should clearly identify the document (including its date and filing party) and cite to the specific page or section that is relevant.
- It appears that section M may apply only to “attachments” filed with a motion or pleading, but not necessarily to exhibits filed with written testimony, which is discussed generally in section K. Entergy suggests that the Scheduling Order be clarified to indicate whether sections M.1 and M.2 also apply to exhibits. To the extent that was the Board’s intent, or that the Board otherwise believes such direction is warranted, Entergy suggests adding provisions similar to sections M.1 and M.2 to section K.
- Section K.3 of the Draft Scheduling Order provides that the interested governmental entities may submit written statements of position, written testimony with supporting affidavits, and exhibits no later than sixty (60) days after the submission of the same types of materials by Entergy and/or the NRC Staff. Given that the interested governmental entities are likely to support the Intervenor’s positions on the contentions on which they are participating, Entergy proposes that they make their submittals at the same time as the Intervenor. This would allow Entergy (and possibly the Staff) the opportunity to also respond to those submittals.
- Section K.3 of the Draft Scheduling Order also provides that the Intervenor may file optional revised statements of position and rebuttal testimony with supporting affidavits and exhibits sixty (60) days after Entergy and the NRC Staff make their filings under Section K.2. Entergy proposes that the time allotted for submittal of these optional filings be reduced (*e.g.*, to 30 days). The parties’ submittals under sections K.1 and K.2 of the Scheduling Order should serve to focus and thoroughly address the contested issues and avoid the need for lengthy or extensive rebuttal testimony. Relatedly, insofar as the Intervenor’s submittals under K.3 contain entirely new information, Entergy requests that it be given an appropriate

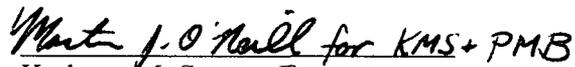
Lawrence G. McDade, Chairman
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop
June 16, 2010
Page 3 of 3

opportunity to respond to that new information, whether in the form of a motion *in limine* or motion to strike, or in a narrowly-focused responsive pleading authorized by the Board.

- Entergy proposes that the parties and interested governmental entities have the option of serving exhibits and attachments on the other parties and interested governmental entities in an electronic format on CD or DVD by next day express mail or expedited delivery in lieu of service by e-mail with paper copies served by another approved method. This option would allow for significant savings in terms of costs and resources, and would avoid issues associated with e-mail file size limitations and with shipping large packages to the numerous parties and interested governmental entities. Unless the Board directs otherwise, hard copies of exhibits and attachments would still be sent to the Board members and the Office of the Secretary.
- Entergy seeks confirmation that section G.4, Motion for Extension of Time, would apply to the filing of proposed Findings of Fact and Conclusions of Law, and responses thereto. Depending on the length of the evidentiary hearing and the complexity of the record, a modest extension of the deadlines set forth in section N may be warranted.

Entergy appreciates the opportunity to comment on the Draft Scheduling Order and, subject to the clarifications and modifications suggested above, respectfully requests that the Board promptly issue the Final Scheduling Order. To the extent the Board considers material changes to the schedule or sequence of matters proposed in the Draft Scheduling Order at the request of the other Parties, however, Entergy requests an opportunity to provide further comments on such changes.

Respectfully submitted,


Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.

Counsel for Entergy Nuclear Operations, Inc.

cc: Service List

**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))	
	June 16, 2010

CERTIFICATE OF SERVICE

I hereby certify that copies of the letter entitled "Entergy's Comments on the Draft Scheduling Order for the IPEC License Renewal Proceeding," dated June 16, 2010, were served this 16th day of June, 2010 upon the persons listed below, by first class mail and e-mail as shown below.

Administrative Judge
Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: lgm1@nrc.gov)

Administrative Judge
Kaye D. Lathrop
Atomic Safety and Licensing Board Panel
190 Cedar Lane E.
Ridgway, CO 81432
(E-mail: kdl2@nrc.gov)

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: rew@nrc.gov)

Office of the Secretary*
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: hearingdocket@nrc.gov)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
(E-mail: ocaamail@nrc.gov)

Josh Kirstein, Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Josh.Kirstein@nrc.gov)

Sherwin E. Turk, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian G. Harris, Esq.
Andrea Z. Jones, Esq.
Office of the General Counsel
Mail Stop: O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: set@nrc.gov)
(E-mail: bnm1@nrc.gov)
(E-mail: david.roth@nrc.gov)
(E-mail: brian.harris@nrc.gov)
(E-mail: andrea.jones@nrc.gov)

Manna Jo Greene
Environmental Director
Hudson River Sloop Clearwater, Inc.
724 Wolcott Avenue
Beacon, NY 12508
(E-mail: mannajo@clearwater.org)

Stephen C. Filler, Board Member
Hudson River Sloop Clearwater, Inc.
303 South Broadway, Suite 222
Tarrytown, NY 10591
(E-mail: sfiller@nylawline.com)

Ross Gould, Member
Hudson River Sloop Clearwater, Inc.
10 Park Avenue, #5L
New York, NY 10016
(E-mail: rgouldesq@gmail.com)

Greg Spicer, Esq.
Office of the Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
(E-mail: gss1@westchestergov.com)

Thomas F. Wood, Esq.
Daniel Riesel, Esq.
Ms. Jessica Steinberg, J.D.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
(E-mail: driesel@sprlaw.com)
(E-mail: jsteinberg@sprlaw.com)

John Louis Parker, Esq.
Regional Attorney
Office of General Counsel, Region 3
NYS Dept. of Environmental Conservation
21 S. Putt Corners Road
New Paltz, New York 12561-1620
(E-mail: jlparker@gw.dec.state.ny.us)

Michael J. Delaney, V.P. – Energy
New York City Economic Development
Corp.
110 William Street
New York, NY 10038
(E-mail: mdelaney@nycedc.com)

Phillip Musegaas, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591
(E-mail: phillip@riverkeeper.org)
(E-mail: dbrancato@riverkeeper.org)

Daniel E. O'Neill, Mayor
James Siermarco, M.S.
Liaison to Indian Point
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
(E-mail: vob@bestweb.net)

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(E-mail: Robert.Snook@po.state.ct.us)

Mylan L. Denerstein, Esq.
Executive Deputy Attorney General,
Social Justice
Office of the Attorney General
of the State of New York
120 Broadway, 25th Floor
New York, New York 10271
(E-mail: Mylan.Denerstein@oag.state.ny.us)

Andrew M. Cuomo, Esq.
Attorney General of the State of New York
John J. Sipos, Esq.
Charlie Donaldson Esq.
Assistants Attorney General
The Capitol
Albany, NY 12224-0341
(E-mail: john.sipos@oag.state.ny.us)

Janice A. Dean
Office of the Attorney General
of the State of New York
Assistant Attorney General
120 Broadway, 26th Floor
New York, New York 10271
(E-mail: Janice.Dean@oag.state.ny.us)

Joan Leary Matthews, Esq.
Senior Attorney for Special Projects
Office of the General Counsel
New York State Department of
Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12207
(E-mail: jlmatthe@gw.dec.state.ny.us)

* Original and 2 copies provided to the Office of the Secretary.

A handwritten signature in black ink, appearing to read "Martin J. O'Neill", written over a horizontal line.

Martin J. O'Neill, Esq.
Counsel for Entergy Nuclear Operations, Inc.

DBI/64970752.1