

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman  
Dr. Kaye D. Lathrop  
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-0247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

July 1, 2010

SCHEDULING ORDER<sup>1</sup>

This proceeding arises from a challenge to the application of Entergy Nuclear Operation, Inc. (Entergy or Applicant) to renew its operating licenses for Indian Point Nuclear Generating Units 2 and 3 in Buchanan, New York.<sup>2</sup> On July 31, 2008, the Board issued a Memorandum and Order admitting the State of New York (New York), Riverkeeper, Inc. (Riverkeeper), and Hudson River Sloop Clearwater, Inc. (Clearwater) as Parties to this proceeding and granting the State of Connecticut (Connecticut), Westchester County (Westchester), New York City (through its Economic Development Corporation), the Town of Cortlandt (Cortlandt), and the Village of Buchanan (Buchanan)

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<sup>1</sup> If any deadline specified in this Scheduling Order falls on a Saturday, Sunday, or federal holiday, the deadline shall be the first business day thereafter.

<sup>2</sup> See Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period, 72 Fed. Reg. 42,134, 42,134-35 (Aug. 1, 2007).

an option, which was subsequently accepted, to participate in this proceeding as interested governmental entities.<sup>3</sup>

The initial scheduling conference in this proceeding was conducted on January 14, 2009.<sup>4</sup> Thereafter, on August 24, 2009, and April 19, 2010, the Board conducted a second and then a third scheduling conference.<sup>5</sup> During the April 19th conference, the Board raised various scheduling issues and offered the participants in this proceeding the opportunity to address these issues in writing. These conferences and the subsequent written submissions<sup>6</sup> have resulted in this Scheduling Order which, hereafter, will govern the course of this proceeding.

A. Final Environmental Impact Statement and Final Safety Evaluation Report.

During the scheduling conference on August 24, 2009, the NRC Staff advised the Board that it anticipated the Final Environmental Impact Statement (FEIS) would be

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<sup>3</sup> LBP-08-13, 68 NRC 43, 217 (2008); Licensing Board Memorandum and Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) (Dec. 18, 2008) at 2 (unpublished).

<sup>4</sup> Tr. at 748-833 (Jan. 14, 2009). Scheduling Conferences are conducted pursuant to 10 C.F.R. §§ 2.329 and 2.332.

<sup>5</sup> Tr. at 748-94 (Aug. 24, 2009) and Tr. at 795-900 (Apr. 19, 2010). We note that the page numbers for the January 14, 2009, and the August 24, 2009, transcripts overlap. Apparently the court reporter was unaware of the January 14th conference when he began the August 24th conference at page 748. Accordingly, we will reference the date as well as the page number for transcript citations.

<sup>6</sup> See Letter from Counsel, Entergy Nuclear Operations, Inc., to Atomic Safety and Licensing Board (May 4, 2010) (ADAMS Accession No. ML101310551); Letter from Intervenor, to Atomic Safety and Licensing Board (May 4, 2010) (ADAMS Accession No. ML101310601); Letter from Counsel, Entergy Nuclear Operations, Inc., to Atomic Safety and Licensing Board (June 16, 2010); NRC Staff's Comments On the Board's Draft Scheduling Order of June 2, 2010 (Jun. 16, 2010); The State of New York, Riverkeeper, and Hudson River Sloop Clearwater's Supplemental Joint Comments to Atomic Safety and Licensing Board Draft Scheduling Order (Jun 16, 2010); The State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater's Joint Comments and Proposed Modifications to Atomic Safety and Licensing Board Draft Scheduling Order (Jun 16, 2010).

published in or around February 2010.<sup>7</sup> Thereafter, the Board was advised by letter that the projected publication date for the FEIS had been changed to May 31, 2010,<sup>8</sup> and during the April 19, 2010, status conference the NRC Staff stated that the projected date for the publication of the FEIS had been further delayed by several months and that late August 2010 was the expected date of issuance of the document.<sup>9</sup> The Final Safety Evaluation Report (FSER) was published in November 2009.<sup>10</sup>

B. Mandatory Disclosures and Production of Hearing File.<sup>11</sup>

The regulations specify that, within thirty (30) days of the Board's ruling admitting contentions, the parties must make certain mandatory disclosures.<sup>12</sup> In addition, Subpart L proceedings require the NRC Staff to produce a hearing file and make it available to all parties.<sup>13</sup>

In this proceeding the parties agreed to a disclosure schedule under which the initial phase of the mandatory disclosures would be completed by January 23, 2009, and information or documents subsequently developed or obtained would be disclosed in

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<sup>7</sup> Tr. at 755 (Aug. 24, 2009).

<sup>8</sup> Letter from Sherwin E. Turk, Counsel for NRC Staff, to Atomic Safety and Licensing Board (Feb. 4, 2010) (ADAMS Accession No. ML1003511910).

<sup>9</sup> Tr. at 802-03, 807-08 (Apr. 19, 2010); see also Letter from Sherwin E. Turk, Counsel for NRC Staff, to Atomic Safety and Licensing Board (May 27, 2010) (ADAMS Accession No. ML1014701750).

<sup>10</sup> See Office of Nuclear Reactor Regulation, Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Units Nos. 2 and 3, Docket Nos. 50-247 and 50-248, Entergy Nuclear Operations, Inc., NUREG-1930 (Vols. 1-2 Nov. 2009) (ADAMS Accession Nos. ML093170451 and ML093170671).

<sup>11</sup> Except where otherwise specified herein, the term "mandatory disclosures" includes the witness lists and privilege logs required under 10 C.F.R. § 2.336(a) and (b).

<sup>12</sup> 10 C.F.R. § 2.336(a), (b).

<sup>13</sup> 10 C.F.R. § 2.1203(a).

monthly updates.<sup>14</sup> At the April 19th conference, all parties stated that the disclosures to date had been made consistent with the approved agreement and that no problems had arisen in that regard.<sup>15</sup>

The obligation of all participants in this proceeding to update disclosures with newly acquired or developed information that is material to the issues presented in this proceeding continues until the Board has issued its initial decision in this proceeding. However, once the hearing has commenced, updates are not to be made in monthly reports but must be made immediately upon the discovery of any new, relevant information.

C. Protective Order and Non-Disclosure Agreement.

Consistent with the cooperative spirit demonstrated to date in this proceeding, all parties agreed to a comprehensive Protective Order to facilitate the expeditious disclosure of sensitive information. After review, the Board approved and entered a Protective Order in the form agreed to by the parties.<sup>16</sup> That Protective Order will continue to govern the disclosure and use of proprietary trade secret, commercial, and financial information in this proceeding unless it is expressly modified by order of the Board.

D. Disclosure Disputes and Motions to Compel.

If the need to file a motion to compel arises, it shall be filed not later than twenty (20) days after the occurrence or circumstance that gives rise to the motion or the date

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<sup>14</sup> Tr. at 770-72 (Jan. 14, 2009); Tr. at 756 (Aug. 24, 2009).

<sup>15</sup> Tr. at 758 (Aug. 24, 2009); Tr. at 803-05 (Apr. 19, 2010). During the April 19th conference, the representative of Hudson River Sloop Clearwater, Inc. (Clearwater) stated that he was engaging in discussions regarding an unspecified disclosure issue. Tr. at 803-04 (Apr. 19, 2010). To date, no discovery motion has been presented by Clearwater. Accordingly, the Board assumes that the issue has been resolved to the satisfaction of the parties. However, while the Board desires parties to resolve disputes if possible, if an impasse occurs, the Board will promptly resolve disclosure disputes.

<sup>16</sup> Licensing Board Protective Order (Sept. 4, 2009) (unpublished).

of this Order, whichever is later. This additional time will be authorized for the filing of such motions in order to allow the parties a full opportunity to resolve such disputes before seeking intervention by the Board.<sup>17</sup>

E. Monthly Status Report.

Commencing on August 3, 2010, the NRC Staff shall submit a short report that includes an update of its estimate of the date on which the FEIS will be issued.

Thereafter, the NRC Staff shall update this status report on the first Tuesday of every month until the FEIS is issued. In addition, each party shall promptly inform the Board of any other developments that could potentially impact the schedule for this proceeding.

F. Additional Contentions.

1. Consolidated Briefing. A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a nontimely new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.<sup>18</sup>

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<sup>17</sup> Ordinarily, motions must be filed within ten (10) days after the occurrence or circumstance from which the motion arises. 10 C.F.R. § 2.323(a).

<sup>18</sup> This procedure resolves difficulties that have arisen in several proceedings concerning the interplay of the sequence and timing for motions under 10 C.F.R. § 2.323 (motion, answer), and the sequence and timing for contentions under 10 C.F.R. § 2.309(h) (contention, answer, reply). Further, this procedure expedites the process by collapsing the two-step process established by the regulations into a single step.

2. Timeliness. A motion and proposed new contention specified in the preceding paragraph shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the motion and proposed contention shall be evaluated as a nontimely proposed contention under the rubric of 10 C.F.R. § 2.309(c)(1). If the movant is uncertain, it may file pursuant to both sections, and the motion should cover the three criteria of 10 C.F.R. § 2.309(f)(2) and the eight criteria of 10 C.F.R. § 2.309(c)(1) (as well as the six criteria of 10 C.F.R. § 2.309(f)(1)).

3. Selection of Hearing Procedures. A motion and proposed new contention specified in paragraph F.1 supra may address the selection of the appropriate hearing procedure for the proposed new contention.<sup>19</sup>

G. Pleadings and Motions – Generally.

1. Pleadings – Page Limitation. Motions and answers to motions shall not exceed twenty-five (25) pages in length (including signature page but excluding attachments, see paragraph M.5, infra), absent preapproval of the Board. A motion for preapproval to exceed this page limitation shall be submitted in writing no less than three (3) business days prior to the time the motion or answer is due to be filed. A motion to exceed this page limitation must (i) indicate whether the request is opposed or supported by the other participants in the proceeding and, if opposed, to succinctly describe the grounds stated for such opposition; (ii) provide a good faith estimate of the number of additional pages that will be filed; and (iii) demonstrate good cause for being permitted to exceed the page limitation.

2. Response to New Facts or Arguments in Answer Supporting a Motion. Except for a motion to file a new or amended contention as set forth in Section F supra

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<sup>19</sup> See 10 C.F.R. §§ 2.309(g) and 2.310(d).

or where there are compelling circumstances, the moving party shall have no right to reply to an answer or response opposing the granting of a motion.<sup>20</sup> However, if any party files an answer that supports a motion, then a party opposing the motion may, within ten (10) days after service of that answer, file a reply to any new facts or arguments presented in that answer. Except as otherwise specified herein, no further supporting statements or responses thereto will be entertained.<sup>21</sup>

3. Motion for Leave to File Reply. Except as provided for in Section G.2. above, no party may file a reply without prior leave from the Board. A motion for leave to file a reply shall be submitted not less than three (3) business days prior to the time the reply would be required to be filed.<sup>22</sup> A motion to file a reply must demonstrate good cause for permitting the reply to be filed and must indicate whether the request is opposed or supported by the other participants in the proceeding and, if opposed, to succinctly describe the grounds stated for such opposition.

4. Motion for Extension of Time. Unless modified by the Board, or otherwise specified in this Order, a motion for extension of time shall be submitted in writing at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. In addition to all other requirements, a motion for extension of time must (i) demonstrate appropriate cause that supports permitting the extension; and (ii) indicate whether the request is opposed or supported by the other

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<sup>20</sup> See 10 C.F.R. § 2.323(c).

<sup>21</sup> This provision avoids unnecessary confusion and litigation that has arisen on this point in several cases. This provision is modeled on 10 C.F.R. § 2.710(a).

<sup>22</sup> Although the agency's rules of practice regarding motions do not provide for reply pleadings, the Board will presume that for a reply to be timely it would have to be filed within seven (7) days of the date of service of the answer it is intended to address. See 10 C.F.R. § 2.309(h)(2).

participants in the proceeding; and, if opposed, succinctly describe the grounds stated for such opposition.

5. Answer Opposing a Motion to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading. An answer to a motion to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served within one (1) business day after the filing of the motion.

6. Motion Certification. In accordance with 10 C.F.R. § 2.323(b), a motion will be rejected if it does not include the following certification by the attorney or representative of the moving party:

“I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.”<sup>23</sup>

7. Answer Certification. If the attorney or representative of a party is contacted pursuant to the consultation requirement of 10 C.F.R. § 2.323(b), then that person (or his or her alternate) shall make a sincere effort to make himself or herself available to listen and respond to the moving party’s explanation, and to resolve the factual and legal issues raised in the motion. If the answering party is unaware of any attempt by the moving party to contact it, then the answer shall so certify. Otherwise, an answer will be rejected if it does not include the following certification by the contacted attorney or representative (or his or her alternate) of the answering party:

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<sup>23</sup> Although in general the movant has only ten (10) days within which to file its motion under 10 C.F.R. § 2.323(a), the Board believes that, in order to be sincere, the effort should be timely, i.e., not initiated at the last minute, but instead commenced sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question. Cf. Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-05, 63 NRC 116, 128-31 (2006). If the initial consultation is initiated at a reasonable time and the parties believe that all or part of the matter may be resolved amicably if additional time for filing the motion were provided, the parties are encouraged to file a joint motion requesting an extension of time.

“I certify that I have made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.”

It is inconsistent with the dispute avoidance/resolution purposes of 10 C.F.R. § 2.323(b), and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that “it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed.”

8. Supplemental Information. The certifications specified in the foregoing two subsections may be supplemented with any additional information that the representative or attorney deems necessary to ensure the accuracy of the certification or to explain the situation.

H. Dispositive Motions.

Dispositive motions, such as motions for summary disposition under 10 C.F.R. § 2.1205 and Subpart L evidentiary hearings under 10 C.F.R. § 2.1207, are both conducted on the basis of written pleadings, testimony, and exhibits. The Board finds that such motions for summary disposition, if filed late in the proceeding when the parties are heavily engaged in other tasks (e.g., preparing and submitting their pleadings, testimony, and exhibits immediately prior to the commencement of the evidentiary hearing), may impede and burden the litigants and the Board, rather than serve to narrow the scope or expedite the resolution of the adjudicatory proceeding.

Indeed, the Subpart L proceeding has two key advantages over motions for summary disposition. First, in a Subpart L evidentiary hearing, the Board may ask the witnesses to appear in person and answer questions, the answers to which might

significantly assist in resolving the matter.<sup>24</sup> This is not possible when ruling on a motion for summary disposition. Second, in an evidentiary hearing, the Board may weigh competing evidence and expert opinion and may resolve/decide factual disputes, whereas this is not possible when ruling on motions for summary disposition, which are restricted to situations where “there is no genuine issue as to any material fact.”<sup>25</sup>

Further, a motion for summary disposition requires significant and often duplicative time and effort from all parties (and the Board), whereas, historically, Subpart L evidentiary hearings have proven to be short, often requiring a day or less to hear any particular contention. For the foregoing reasons, motions for summary disposition and other dispositive motions, while permissible, will be managed in this proceeding as follows:<sup>26</sup>

1. Certification. A dispositive motion (e.g., motion for summary disposition or motion to dismiss) will be rejected unless, in addition to the signature requirements of 10 C.F.R. § 2.304(d), the certifications required by 10 C.F.R. § 2.323(b), and this Order,

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<sup>24</sup> See 10 C.F.R. § 2.1207(b)(6). The Board may also allow parties to conduct cross-examination in Subpart L proceedings pursuant to 10 C.F.R. § 2.1204(b)(3).

<sup>25</sup> 10 C.F.R. § 2.710(d)(2). See also id. § 2.1205(c).

<sup>26</sup> The Commission has stated that there may be times where dispositive motions should not be entertained because consideration of such motions would unduly delay or complicate proceedings and distract parties from preparation for a scheduled hearing. Moreover, according to the Commission, there may be situations in which the time required to consider dispositive motions and to issue a ruling on these motions will substantially exceed the time needed to complete the hearing. Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2186 (Jan. 14, 2004). More recently, the Commission issued a notice in an expedited case prohibiting summary disposition motions from proceeding absent an affirmative finding by the Board that it would expedite the proceeding. Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility), 74 Fed. Reg. 38,052, 38,057 (July 30, 2009) (“[T]he Licensing Board shall not entertain motions for summary disposition under 10 C.F.R. 2.710, unless the Licensing Board finds that such motions, if granted, are likely to expedite the proceeding.”).

the motion includes the following certification by the attorney or representative of the moving party:

"I certify that this motion is not interposed for delay or any other improper purpose, that I believe in good faith that there is no genuine issue as to any material fact relating to this motion, and that the moving party is entitled to a decision as a matter of law, as required by 10 C.F.R. §§ 2.1205 and 2.710(d)."<sup>27</sup>

2. Additional Time for Dispositive Motions. In light of the gravity and importance of dispositive motions, and in order to accommodate careful consultation as specified above, dispositive motions may be filed up to thirty (30) days after the occurrence or circumstance from which the motion arises (rather than the ten (10) day time frame established by 10 C.F.R. § 2.323(a)), provided that the moving party commences sincere efforts to contact and consult all other parties within fifteen (15) days of the occurrence or circumstance, and the accompanying certification so states.<sup>28</sup>

3. Answers. In accordance with 10 C.F.R. § 2.1205(b), an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within twenty (20) days after service of the motion. If the answering party concludes that additional time is needed in order to prepare an appropriate answer, it

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<sup>27</sup> See 10 C.F.R. § 2.304(d) (representations of a signatory to a pleading); cf. Fed. R. Civ. P. 11(b).

<sup>28</sup> At the April 19, 2010 conference, Entergy indicated that it intended to supplement its application in a manner that, in its view, could impact contentions NYS-25 and NYS-26/26A. Tr. at 806-07 (Apr. 19, 2010). While neither setting specific deadlines, nor giving specific guidance with regard to those anticipated submissions other than what is contained in section H, we urge Entergy to file any supplements to its Application, and then file any motions that may arise from those supplements with all deliberate speed in order to minimize any delay that may otherwise result. Specifically, we expect that, within the context of the schedule outlined in this Order, the intervenors will have a fair opportunity to respond to those motions before the publication of the FEIS. If the Board determines that the intervenors do not have sufficient time under the schedule set out in this order to assess new information on critical safety issues prior to addressing dispositive motions, the Board shall grant the intervenors such additional time as we deem appropriate. Such action, however, would result in the delay of this proceeding.

shall file a motion for additional time within which to respond to the dispositive motion within ten (10) days after service thereof.

4. Deadline. With the exceptions noted below, absent express authorization from the Board, all motions for summary disposition based on information that is now available, including motions based on the FSER, shall be filed on or before July 30, 2010. In addition, no motion for summary disposition or other dispositive motion relating to a National Environmental Policy Act (NEPA) contention may be filed more than thirty (30) days after the NRC Staff publishes the FEIS. With regard to any motion for summary disposition filed after that date, the moving party shall identify and explain the new information or event that gave rise to the motion and the reason why the motion could not be filed by the due date. If the Board determines that the motion was not filed in a timely manner, or that its consideration would delay the hearing in this proceeding, the motion will be summarily denied.

I. Clarification, Simplification, and Amendment of the Pleadings.

The Board encourages the parties and NRC Staff to continue to consider and pursue such measures as are specified in 10 C.F.R. §§ 2.329(c)(1)-(3) and 2.338. We will revisit these issues throughout this proceeding. For example, if it appears that stipulations or admissions of fact can narrow or eliminate factual or legal disputes, the parties and the NRC Staff are encouraged to consult with each other and/or file motions to pursue the same.

J. Consolidation of the Safety and Environmental Issues for Hearing.

The Board does not believe that a bifurcated hearing is practicable in this proceeding. Accordingly, the Board contemplates a single evidentiary hearing that will

address both environmental and safety contentions. At this point the Board anticipates that, once begun, the hearing will continue from day to day until it is concluded.<sup>29</sup>

K. Evidentiary Hearings Filings.

Pursuant to 10 C.F.R. § 2.1207, a number of documents must be filed immediately prior to the evidentiary hearing. The Board has determined that the earliest practicable “Trigger Date” for the initiation of such filings is the date when the NRC Staff makes the FEIS publicly available and provides a copy of it to all participants in this proceeding.<sup>30</sup> However, if new or amended contentions are filed that are based on the FEIS, the trigger date will be the day on which the last timely Reply arising from the filing of the new or amended contentions is filed.<sup>31</sup>

1. Initial Statements of Position, Testimony, Affidavits, and Exhibits. Unless modified by the Board due to the admission of new or amended contentions or for some other due cause, ninety (90) days after the trigger date, the intervenors shall file their initial written statement of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party’s case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence supports a factual or legal position). The written testimony shall be under oath or by an

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<sup>29</sup> We do not, however, anticipate conducting the hearing on Saturday, Sunday, or legal holidays.

<sup>30</sup> 10 C.F.R. § 2.332(d) prohibits the commencement of evidentiary hearings on environmental issues until after issuance of the FEIS. It also prohibits commencement of evidentiary hearings on safety issues until after issuance of the FSER, unless the Board affirmatively finds that the safety hearing can be held earlier and still expedite the ultimate resolution of the case.

<sup>31</sup> See Section F.1. supra.

affidavit so that it is suitable for direct receipt into evidence, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or rely upon for their statements or position. If such documents are not attached, the Board will not consider them for any purpose in making findings of fact. Such submissions shall be made on a contention-by-contention basis.

2. Entergy's and the NRC Staff's Statements of Position, Testimony, Affidavits, and Exhibits. No later than sixty (60) days after service of the materials submitted under paragraph K.1, Entergy and the NRC Staff shall file their respective written statements of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(2). The written statement of position shall be in the nature of a response brief that identifies the legal and factual weaknesses or, in the event that the NRC Staff supports a contention, the strengths in the intervenor's position, identifies witnesses and evidence, and specifies the precise purpose of witnesses and evidence. This testimony shall also be under oath or by an affidavit so that it is suitable for direct receipt into evidence, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are relying upon for their statements of position. If such documents are not attached, the Board will not consider them for any purpose in making findings of fact. Such submissions shall be made on a contention-by-contention basis.

3. Optional Revised Statement of Position by Intervenors and Submissions by Interested Governmental Entities. The Intervenors may, but need not, submit a revised statement of position and rebuttal testimony with supporting affidavits and exhibits in response to the materials submitted by Entergy and/or the NRC Staff. If they choose to do so, they shall notify all parties of their intention no later than ten (10) days after the service of the materials submitted by Entergy and the NRC Staff under paragraph K.2 and must submit their revised statement of position and rebuttal

testimony no later than sixty (60) days after the service under paragraph K.2. Likewise, the interested governmental entities who have been authorized to participate in this proceeding pursuant to 10 C.F.R. § 2.315(c) may submit a written statement of position, written testimony with supporting affidavits, and exhibits no later than sixty (60) days after the submission of materials by Entergy and/or the NRC Staff under paragraph K.2. Such submissions shall be made on a contention-by-contention basis. If interested governmental entities submit written statements of position and/or written testimony, rebuttal may be submitted within thirty (30) days of such submissions.

4. Motions In Limine or to Strike. No later than thirty (30) days after service of the materials submitted by intervenors and/or interested governmental entities under paragraphs K.1 or K.3 or by Entergy and the NRC Staff under paragraph K.2, the parties shall file any motions in limine or motions to strike regarding the materials submitted under paragraphs K.1 through K.3. Answers shall be filed no later than ten (10) days after service of such motions.<sup>32</sup>

5. Proposed Questions for the Board to Ask.<sup>33</sup> No later than thirty (30) days after service of the last materials submitted under paragraph K.2 or, if applicable, K.3, all parties may file proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The direct or rebuttal examination plans should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the

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<sup>32</sup> A Motion in limine or to strike regarding a submission made pursuant to Section K.1. must be filed within thirty (30) days after the Section K.1. submission is made. Likewise a Motion regarding a submission made pursuant to Section K.2. must be filed within thirty (30) days after the Section K.2. submission is made, etc.

<sup>33</sup> A party should cover all essential points in the direct and rebuttal testimony that it prefiles for each of its own witnesses. The prefiled proposed questions should not focus on a party's own witnesses, but should instead be directed to the witnesses of the other parties.

proposed line of questioning (including specific questions) that may logically lead to achieving the objective. The proposed direct examination questions and plans should be filed in camera and not served on the NRC Staff or any other party. Such proposals shall be submitted only to the Board, and the Board will not disclose such proposals to the other parties, except in any hearing conducted in furtherance of such matters.<sup>34</sup>

6. Motions for Cross-Examination.<sup>35</sup> No later than thirty (30) days after service of the last materials submitted under paragraph K.2 or, if applicable, K.3, all parties shall file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). The motion for cross-examination shall be filed with all parties, but the cross-examination plan itself should be filed in camera and not be served on the NRC Staff or any other party.<sup>36</sup>

7. Witnesses with Written Testimony Must be Available in Person. Unless the Board expressly provides otherwise, each party (including the NRC Staff) must, at its own expense and effort, assure that each person for whom it submitted written direct or

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<sup>34</sup> The proposed questions will, however, be provided to the Commission's Secretary for inclusion in the official record of the proceeding when the Board issues its Initial Decision. 10 C.F.R. § 2.1207(a)(iii).

<sup>35</sup> The basis for permitting cross-examination in Subparts L and G arises from § 556(d) of the Administrative Procedure Act. Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 145 (2009) (citing Citizens Awareness Network, Inc. v. NRC, 391 F.3d 338, 351 (1st Cir. 2004); 69 Fed. Reg. 2182, 2195-96 (Jan. 14, 2004)).

<sup>36</sup> These prepared cross-examination plans will be kept in confidence by the Board until the issuance of the Board's Initial Decision, at which time they will be provided to the Commission's Secretary for inclusion in the official record of this proceeding. 10 C.F.R. § 2.1204(b)(2).

rebuttal testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions.<sup>37</sup>

8. Evidentiary Hearing. Although the specific time and date for the evidentiary hearing will be determined later, the Board currently contemplates that it will commence between thirty (30) and sixty (60) days after the service of the material specified in paragraphs K.5 and K.6.

L. Requests for Subpart G Proceeding Based on Disclosures of Eyewitnesses.

A request that a contention be handled pursuant to Subpart G procedures based on 10 C.F.R. § 2.310(d) (which focuses, inter alia, on issues “where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness”) shall be filed within thirty (30) days after service of the last materials submitted under paragraph K.2 or, if applicable, K.3.

M. Attachments to Motions and other Pleadings.

1. Documents Must be Attached. If written testimony, an affidavit, or a motion or pleading of any kind seeks to have the Board rely on the contents of a report, website, NUREG, guidance document, or other document of any kind (other than to a statute, regulation, case, or other legal authority), then a copy of that document, or the relevant portion thereof, shall be submitted with and attached to the pleading. The pleading must cite to the specific page or section of the document that the offering party considers to be relevant.

2. Exception. If the following documents are publicly available on the NRC ADAMS system, then they do not need to be attached to written testimony, an affidavit, a

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<sup>37</sup> If, after reading the prefiled testimony, the Board concludes that it has no questions for a particular witness and has not granted a motion to allow cross-examination of that witness, it will so advise the parties and that individual will not need to attend the evidentiary hearing. Likewise, if the Board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and will resolve that contention pursuant to 10 C.F.R. § 2.1208.

motion, or pleading: Entergy's Application and Environmental Report (ER), the FEIS, the FSEER, and pleadings previously filed in this proceeding.<sup>38</sup> With regard to such documents, it is sufficient if the offering party clearly identifies the document (including its date and revision number, if any), provides its ADAMS ML number, and cites to the specific page or section that the offering party considers to be relevant. All other documents (or the relevant portions thereof), even if they can be found in ADAMS, shall be attached to the pleading or they will not be considered by the Board.<sup>39</sup>

3. Attached Documents are "Attachments." All documents referred to in written testimony and affidavits shall be labeled and referred to as Exhibits, while documents referred to in motions and pleadings shall be labeled and referred to as "Attachments," not exhibits.<sup>40</sup>

4. Designation and Marking of Attachments. A separate numeric designation shall be assigned by contention to each Attachment (e.g., New York State Contention 17, Attachment 1). With regard to Attachments covered by paragraph M.1, the numeric designation shall be prominently marked either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

5. Page Limits for Attachments. Attachments are not subject to the page limitation set forth in Section G.1 supra.

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<sup>38</sup> The offering party must, however, clearly identify the previously filed document, the party that filed it, the date filed, and cite to the specific page or pages that the offering party considers to be relevant.

<sup>39</sup> The NRC's E-Filing guidance document has instructions concerning the filing of copyrighted material (at page 21). See <http://www.nrc.gov/site-help/e-submittals.html> (under Adjudicatory Submissions, Related Instructional Resources, access link for Guidance for Electronic Submissions to the NRC, Revision 6).

<sup>40</sup> The term "exhibit" is reserved for use as a designation for those items that are submitted pursuant to Section K as proffered evidence for the evidentiary hearing.

N. Findings of Fact and Conclusions of Law.

All parties shall submit proposed Findings of Fact and Conclusions of Law within sixty (60) days after the close of the evidentiary hearing in this proceeding. Thereafter, within thirty (30) days after service of the proposed Findings of Fact and Conclusions of Law, all parties may submit responses thereto.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>41</sup>

*/RA/*

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 1, 2010

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<sup>41</sup> Copies of this Order were sent this date by Internet e-mail to: Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (3) Counsel for the State of New York; (4) Counsel for Riverkeeper, Inc.; (5) Manna Jo Green, the Representative for Clearwater; (6) Counsel for the State of Connecticut; (7) Counsel for Westchester County; (8) Counsel for the Town of Cortlandt; (9) Mayor Sean Murray, the Representative for the Village of Buchanan; and (10) Counsel for the New York City Economic Development Corporation.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing SCHEDULING ORDER have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-247-LR and 50-286-LR  
SCHEDULING ORDER

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Docket Nos. 50-247-LR and 50-286-LR  
SCHEDULING ORDER

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[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 1st day of July, 2010.