

August 11, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO STATE OF NEW YORK'S MOTION TO EXTEND TIME IN WHICH  
TO FILE NEW OR SUPPLEMENTAL CONTENTIONS CONCERNING ENTERGY'S NINTH  
AMENDMENT TO THE LICENSE RENEWAL APPLICATION

Pursuant to the Board's July 1, 2010 Scheduling Order<sup>1</sup> and 10 C.F.R. § 2.323(c), the NRC Staff ("Staff") hereby answers the State of New York's ("State's") request<sup>2</sup> to extend the deadline for filing new or amended contentions based upon the Entergy's Ninth Amendment to the License Renewal Application dated July 14, 2010<sup>3</sup> from August 16, 2010 to September 15, 2010. As described below, while the Staff does not oppose a 1 1/2 week extension attributable to the availability of the State's expert, the Staff is opposed to a one-month blanket-extension to file contentions related to the July 14, 2010 amendment, inasmuch as appropriate cause is not demonstrated.

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<sup>1</sup> "Scheduling Order," Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3) (July 1, 2010) (unpublished).

<sup>2</sup> "State Of New York's Motion To Extend Time In Which To File New Or Supplemental Contentions Concerning Entergy's Ninth Amendment To The License Renewal Application" August 10, 2010.

<sup>3</sup> See Entergy Letter dated July 14, 2010, F.R. Dacimo to Document Control Desk, "Amendment 9 to License Renewal Application - Reactor Vessel Internals Program" (NL-10-063). Formal notification of the letter and amendment was served upon the parties on July 15, 2010. See "Notification of Entergy's Submittal of the Reactor Vessel Internals Program for Indian Point Units 2 and 3" July 15, 2010.

### DISCUSSION

Pursuant to 10 C.F.R. § 2.309(f)(2), contentions may be amended or new contentions filed upon a showing that (i) the information that forms the basis of the new or amended contention was not previously available, (ii) the information is materially different than information previously available; and (iii), the new or amended contention has been submitted in a timely fashion based on the availability of the subsequent information. As provided in 10 C.F.R. § 2.309(f)(2), nontimely filings must address eight criteria, which the Board will balance in assessing the non-timely filing. The Board's Scheduling Order, an effective case management tool, provides clear direction to the parties on timeliness for filing of new contentions:

2. Timeliness. A motion and proposed new contention . . . 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)).

Scheduling Order at 6 (emphasis added).

The Board directed that along with a new or amended contention, the filer must address the timely filing criteria, the non-timely filing criteria, or both. *Id.* at 5. The Board provided that a motion for time extension must demonstrate appropriate cause, and indicate reasons for any opposition. *Id.* at 7-8.

The State bases its proposed date upon the date it received several older documents; in particular, Electric Power Research Institute ("EPRI") MRP-228, Materials Reliability Program: Inspection Standard for PWR Internals (Report No. 1016609), dated July 24, 2009, and the EPRI's presentation on reactor internals inspection and evaluation guidelines dated July 30,

2008. Motion at 3. The documents were on Entergy's July 1, 2010 disclosure and provided to the State on August 9, 2010. *Id.* The State says it is more efficient for its expert, the other parties, and the Board to consider a single filing. Motion at 4.

The State also notes that its expert and one attorney recently took, or are about to take, vacations. Motion at 3-4.

### ARGUMENT

Under the existing Scheduling Order, New York already has 30 days to timely file based upon when "new and material information on which [a contention or an amendment to a contention] is based first becomes available." See Scheduling Order at 6. Thus, the proper trigger for a new or amended contention is the availability of the underlying new and material information. See Scheduling Order at 6. Because no new contention has been filed, the Staff cannot determine the actual timeliness relative to any supporting document.<sup>4</sup>

Here, the Motion cites a brief vacation of its expert as part of the basis for doubling the filing time. See Motion at 1. But the Motion is silent about what review the State has performed during the working time of its expert. Further, the State has not provided any other information to show that its expert was otherwise unavailable. Thus, there is no basis given for extending the review time beyond the short vacation period of 1 1/2 weeks.

Regarding the 2008 and 2009 EPRI documents and other documents the State says it received on August 9, 2010, the Motion provides no information to show any conflicts for its expert during the 30-day period after receipt of these documents. Thus, any change of schedule with respect to the expert's availability to review these documents is unsupported.

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<sup>4</sup> If a contention is filed, the Staff will address the availability of the basis documents.

The State also notes that one of its attorneys will be on vacation. Motion at 4. The State has offered no reason why other State attorneys could not efficiently continue to work on any potential filing.

The State argues that it would be more efficient to allow the extended filing time for a unified new or amended contention. Motion at 4. The Commission has recently restated its expectations that Licensing Board and NRC staff, as well as the applicant and other parties, will follow the applicable requirements contained in 10 CFR Part 2 and guidance in the *Commission's Statement of Policy on Conduct of Adjudicatory Proceedings* ("Policy"), CLI-98-12, 48 NRC 18 (1998) (63 Fed. Reg. 41872 (August 5, 1998)). *GE-Hitachi Global Laser Enrichment LLC* (GLE Commercial Facility), CLI-10-04, 71 NRC \_\_ (January 7, 2010) (slip op. at 12-13). The Commission has a long-standing commitment to the expeditious completion of adjudicatory proceedings while ensuring that hearings are fair and produce an adequate record for discussion. *Policy*, CLI-98-12, 48 NRC at 24-25. Allowing an additional month to file based upon a week and a half of expert absence, and based upon the vacation of one attorney while other attorneys are still available, does not meet this policy, in that it would delay the other parties from preparing their responses to any new or amended contentions.

CONCLUSION

For the reasons discussed above, the requested blanket extension to September 15, 2010 for timely filing contentions based upon the July 30, 2008 EPRI document, and the July 24, 2009 EPRI document, and the July 14, 2010 Ninth Amendment to the LRA should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David E. Roth', written over a horizontal line.

David E. Roth  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 11<sup>th</sup> day of August 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO STATE OF NEW YORK'S MOTION TO EXTEND TIME IN WHICH TO FILE NEW OR SUPPLEMENTAL CONTENTIONS CONCERNING ENTERGY'S NINTH AMENDMENT TO THE LICENSE RENEWAL APPLICATION" dated August 11, 2010 have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 11<sup>th</sup> day of August, 2010:

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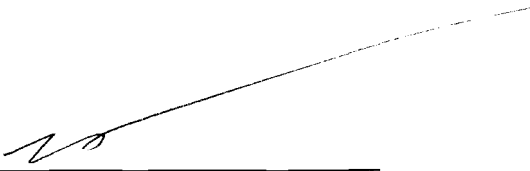
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