

*RAS E-487*

**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

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In re:

Docket Nos. 50-247-LR; 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

March 9, 2011

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**MOTION OF THE STATE OF NEW YORK  
FOR A FOUR DAY EXTENSION OF TIME TO FILE REPLIES  
TO NRC STAFF AND ENTERGY'S MARCH 7, 2011 ANSWERS**

**DOCKETED**

March 9, 2011 (4:57 p.m.)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Office of the Attorney General  
State of New York  
The Capitol  
Albany, New York 12224

*TEMPLATE = SECY-041*

*DS-03*

The State of New York respectfully requests that the Atomic Safety and Licensing Board extend the time for the State – by four days – to file replies to NRC Staff and Entergy’s recently-filed answers to proposed contentions NYS 12-C and 37. If accepted, the State’s request would extend the filing date from Monday, March 14 to Friday, March 18, 2011. NRC Staff does not oppose this request; neither do Clearwater or Riverkeeper. Entergy opposes the request.

### **REGULATORY BACKGROUND**

NRC regulations permit a party to file a reply to an answer to a proposed contention:

Except in a proceeding under 10 CFR 52.103, the requestor/petitioner may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

10 C.F.R. § 2.309(h)(2). This Board’s July 1, 2010 Scheduling Order provides that:

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

Scheduling Order ¶ G.4. This motion is timely as it is being filed three business days before the current March 14, 2011 due date.

### **APPROPRIATE CAUSE SUPPORTS THE REQUEST**

On the evening of Monday, March 7, 2010 NRC Staff and Entergy filed via electronic mail separate answers to the State’s proposed contentions NYS 12-C and 37, which concern,

respectively, clean up costs for a severe reactor accident and energy alternatives.<sup>1</sup> Collectively, Staff and Entergy's pleadings (exclusive of attachments) total approximately 100 pages, or 50 pages for each of the two contentions.

The State seeks additional time (four additional days) to review Staff and Entergy's four answering pleadings and to file replies thereto. To avoid duplication and streamline its filings, the State hopes to file a single reply to each set of answers.

The State respectfully submits that appropriate cause supports the request:

1. Expert and Consultant Availability. One of the State's experts (Mr. Chanin / NYS 12-C) has limited availability to review the Staff and Entergy answers during several days between Tuesday, March 8 and Tuesday, March 15). Another expert (Mr. Bradford / NYS 37) has had an unexpected scheduling conflict during the week of March 7. Also, Mr. Roisman is away from his office to travel to/from, attend, and present at the NRC Regulatory Information Conference on March 8, 9, and 10.
2. Length & Content of Answers. The four answers to NYS 12-C and 37 collectively total 100 pages, and each answering party has presented a host of somewhat differing arguments concerning the proposed contentions. By way of additional example, Entergy's answers include 124 footnotes on NYS 12-C and 110 footnotes on NYS 37, many of which cite to judicial and administrative rulings.
3. Preparation of Single Reply to Each Set of Answers. To avoid duplication and streamline its filings, the State hopes to file a single reply to each set of answers, *i.e.*, a single reply

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<sup>1</sup> NRC Staff and Entergy previously requested and received a seven day extension for submittal of the answers. The State did not oppose that request. See NRC Staff's Unopposed Request For An Extension Of Time For The Staff's And Entergy's Answers To FSEIS Contentions (February 23, 2011) ML110540735; *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), ASLB Order (Granting Time Extension), (February 25, 2011) ML110560161. By operation of 10 C.F.R. § 2.309(h)(2), this scheduling change necessarily moved the date of the State's reply from March 7 to March 14, 2011.

for NYS 12-C and a single reply for NYS 37. The State hopes that such combined filings will simplify the replies and may reduce their overall length when compared to the total pages if there were two separate reply filings for each answer. The State respectfully suggests that such combined replies may assist the Atomic Safety and Licensing Board in its review of the parties' respective positions concerning the State's contentions.

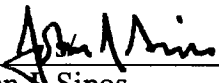
Given the length of the answers and the schedules of certain experts, the State submits that it has demonstrated appropriate cause for the modest four day extension. In addition, the four additional days requested will assist the State's ability to hone its presentation and submit concise replies.

NRC Staff does not oppose the requested extension, and this motion is timely pursuant to the Scheduling Order, ¶ G.4. Entergy's position is that the reasons set forth in this motion do not constitute "appropriate cause" for extending the filing date.

### **CONCLUSION**

In light of the above, the State of New York respectfully submits that appropriate cause exists to justify the proposed extension and requests that the Board grant this unopposed motion to extend the filing date for the State's replies to NRC Staff and Entergy's answers to NYC 12-C and 37 and that the date be extended four days until March 18, 2011.

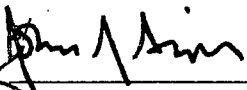
Respectfully submitted,

  
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(518) 402-2251

Dated: March 9, 2011

**10 C.F.R. § 2.323(b) Certification**

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 NRC Staff, Riverkeeper, and Clearwater do not oppose the request. I certify that my efforts have been unsuccessful with respect to Entergy.

  
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John J. Sipos

COPY

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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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  
Entergy Nuclear Operations, Inc. March 9, 2011  
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2011, copies of the State of New York's Motion for a four day extension of time to file replies to NRC Staff and Entergy's March 7, 2011 answers, were served upon the following persons via U.S. Mail and e-mail at the following addresses:

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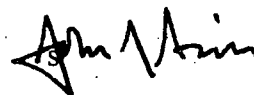
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Dated at Albany, New York  
this 9th day of March 2011