

Attachment 1

**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, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. January 24, 2011
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**STATE OF NEW YORK MOTION FOR LEAVE TO FILE
TIMELY AMENDED BASES TO CONTENTION 17A
(NOW TO BE DESIGNATED CONTENTION 17B)**

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for the State of New York
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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
THE NEW BASES COMPLY WITH THE REQUIREMENTS OF 10 C.F.R. § 2.309(f)(2)	1
THE NEW BASES COMPLY WITH THE REQUIREMENTS OF 10 C.F.R. § 2.309(f)(1)	4
1. The Bases Are Within the Scope of License Renewal	4
2. The Issues Raised Are Material to the Findings that the NRC Must Make to Support the Action that is Involved in this Proceeding	5
3. Adequate Bases Have Been Provided For the Contention.....	5
4. A Concise Statement of Facts and Expert Opinion Support the Contention	6
5. A Genuine Dispute Exists on a Material Issue of Law or Fact.....	6
CONCLUSION.....	7
List of Attachments.....	A-1

**STATE OF NEW YORK MOTION FOR LEAVE TO FILE
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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(f)(2) the State of New York seeks leave to file the attached Contention 17B, which contains amended bases.¹ These amendments are a direct result of the issuance by the Commission, on December 23, 2010, of amendments to 10 C.F.R. § 51.23(old),² Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation & Waste Confidence Decision Update (75 Fed. Reg. 81032-076) [Att. 9].³ The bases are timely and arise out of new information not previously available that is materially different than previously available information. These amended bases also comply with the requirements of 10 C.F.R. § 2.309(f)(1).

**THE NEW BASES COMPLY WITH
THE REQUIREMENTS OF 10 C.F.R. § 2.309(f)(2)**

Prior to December 23, 2010, the binding rule for all nuclear power plant relicensing proceedings provided that (1) a permanent waste repository would be available for high level nuclear waste by 2025 and (2) as a generic matter, spent fuel could be stored at a reactor site for 30 years after shutdown without any significant safety or environmental problems. *See Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), ASLBP No. 07-858-03-LR-BD01 (ML091670435), Order (Ruling on New York State's New and Amended

¹ The only change in the Contention is to change "DSEIS" to "FSEIS."

² To avoid confusion and because the new Waste Confidence Rule does not take effect until January 24, 2011 (75 Fed. Reg. 81032), citations to the rule will indicate whether the "old" version or the "new" version is being referenced.

³ The citation "[Att. ____]" refers to the Attachments accompanying this motion and the declaration of AAG John Sipos.

Contentions) June 16, 2009 (“Amended Contentions Order”) at 16, and Memorandum and Order (Denying Entergy’s Motion for the Summary Disposition of NYS Contention 17/17A) ASLBP No. 07-858-03-LR-BD01 (ML101120094) at 13-14 (“we emphasized that the Waste Confidence Rule remains a binding regulation unless and until the Commission takes action to modify or withdraw it. Accordingly, for the time being, New York may rely on the timetable set in the Waste Confidence Rule for disposal of waste”). However, the new Waste Confidence Rule has changed the context of this Contention 17A by removing any date certain by which a high level waste repository will be available and substituting the finding that it will be ready “when necessary.” 10 C.F.R. § 51.23(a) (new).

This change in § 51.23 (new) means that it cannot be assumed that spent fuel generated at Indian Point will be gone by 2025, the date by which the Commission had concluded that a high level waste repository would be available. Thus, for the first time, there is every reason to believe that spent fuel will remain at the Indian Point site following plant shutdown for an indefinite period.⁴ As a result, and as more fully explained in the January 24, 2011 Declaration of Dr. Stephen Sheppard, the Indian Point site will likely become a high level nuclear waste storage facility for a substantial period of time after it ceases to be an operating nuclear power plant site. Converting the Indian Point site from a productive industrial site into a waste storage site has important, and as yet unexamined, implications for the value of land adjacent to the Indian Point site. This information was not previously available, although the State of New York believed it was essentially known when the Commission announced that many of the bases upon

⁴ In the Waste Confidence Decision Update the Commission emphasizes that it is not endorsing the idea of indefinite storage of spent fuel at reactor sites (75 Fed. Reg. at 81035) but it is also not providing a date by which such spent fuel can be removed. Thus, it must be assumed

which the findings in § 51.23 were no longer valid. Because the Board did not agree and rejected proposed New York State Contention 34 (Amended Contention Order at 16), the information that spent fuel will likely remain at the site long after the plant is shutdown is newly available.

This new information is materially different than the information previously available because now Indian Point can become a high level nuclear waste storage area for an indefinite period after plant shutdown whereas that possibility had been ruled out by the previous Waste Confidence findings.

Finally, this Motion for Leave to File is timely pursuant to the terms of the Board's Scheduling Order. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3) ASLBP No. 07-858-03-LR-BD01, Scheduling Order (July 1, 2010) at 6 ("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"). The Commission announced the new version of § 51.23 and issued its new Waste Confidence Decision Update on December 23, 2010 and made the rule change effective on January 24, 2011. 75 Fed. Reg. 81032.

Accompanying this Motion for Leave is the State of New York's Request for a Determination That The Proposed Amended Bases for Contention 17A Are Not Barred by 10 C.F.R. § 51.23(b), or That Exemption from the Requirements of 10 C.F.R. § 51.23(b) Should Be Granted, or That New York State Has Made a Prima Facie Case That § 51.23(b) Should Be Waived as Applied to New York State Contention 17B. That pleading is also timely because to

that the wastes will be there indefinitely - *i.e.* without a definite termination of such storage.

the extent New York State seeks a waiver of portions of § 51.23(b) (new) the only applicable timeliness standard is that it be “reasonable.” *Tennessee Valley Authority* (Watts Bar Unit 2) LBP-10-12 at 14 (“There being no NRC regulation that governs the timing of waiver petitions, we agree with SACE that the appropriate standard for determining whether a waiver petition is timely is reasonableness”). Filing for a waiver of the provisions of a new regulation as applied to new contention bases within 30 days of when the new regulation was adopted and on the same day as the timely filing of the proposed new contention bases are filed is inherently timely.

**THE NEW BASES COMPLY WITH THE
REQUIREMENTS OF 10 C.F.R. § 2.309(f)(1)**

1. The Bases Are Within the Scope of License Renewal

New York State Contention 17A claims that:

the DSEIS Fails to Address the Impact of the Continued Operation of IP2 and IP3 for Another 20 Years on Offsite Land Use, Including Real Estate Values in the Surrounding Area in Violation of 10 C.F.R. §§ 51.71(a), 51.71(d), 51.95(c)(1), and 51.95(c)(4).

This contention and its bases have already been admitted by the Board. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing) LBP-08-13 at 82-83, 68 NRC 43 (July 31, 2008) and Order (Ruling on New York State’s New and Amended Contentions) (June 16, 2009) at 8. The proposed amended bases modify the reasons why license renewal will have a substantial adverse impact on offsite land use value and local tax revenues. Thus, the State’s additional bases, which continue the challenge to the environmental impact statement, remain within the scope of this license renewal proceeding.

2. The Issues Raised Are Material to the Findings that the NRC Must Make to Support the Action that is Involved in this Proceeding

The NRC must ascertain the site specific socioeconomic impacts of license renewal and the socioeconomic costs and benefits of the no action alternative. 10 C.F.R. § 51.10(a); NUREG 1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (“GEIS”) at 4-109; 10 C.F.R. Part 51, Table B-1 of Appendix B of Subpart A. Offsite impacts on land value and tax revenue from such land are material to this relicensing proceeding, because, if the State is correct in its contention, the NRC must consider, but has not adequately considered, these impacts in determining whether to approve the proposed action and in evaluating the no action alternative. The State has demonstrated in the new bases, which are supported by the January 24, 2011 Report of Dr. Stephen Sheppard (“4th Sheppard Report”) [Att. 15], that these offsite impacts are substantial. 4th Sheppard Report at 1, 6. The magnitude of the adverse offsite impact on land value and local taxes of license renewal could be as much as \$237,000,000. *Id.* at 1, 6.

3. Adequate Bases Have Been Provided For the Contention

The State of New York today seeks leave to present additional bases in further support of a previously-admitted contention. These additional bases are detailed and exceed the regulatory requirement in 10 C.F.R. § 2.309(f)(1)(ii) for a “brief explanation” of the bases. The additional bases evaluate a number of possible scenarios which may arise as a result of license renewal based on the uncertainties created by the recent amendments to 10 C.F.R. § 51.23. These bases are in addition to the bases previously accepted when Contention NYS-17 was admitted.

4. A Concise Statement of Facts and Expert Opinion Support the Contention

Dr. Sheppard has offered his expert opinion that there are substantial offsite adverse impacts on land value and tax revenues that will occur if license renewal is permitted. He has supported his opinion with references to published, peer-reviewed literature that find that the presence of the kind of disamenity created by an operating nuclear power plant and by the storage of high level nuclear waste does depress local land values and, concomitantly, the tax revenues from such land. He also demonstrates that these effects increase with time and that license renewal will extend the period during which such effects will occur by at least 30 years.

5. A Genuine Dispute Exists on a Material Issue of Law or Fact

The State of New York has provided sufficient information that a genuine dispute exists with regard to several material issues of fact including: (1) whether extending the operating life of Indian Point will perpetuate depressed land values and reduced tax revenues and (2) the potential magnitude of these depressed land values. There are also material disputes of law including: (1) whether the FSEIS is required to consider the adverse impact on offsite land values and tax revenues from license renewal; (2) whether the FSEIS has provided sufficient analysis of this issue; and (3) whether all or any part of the bases are precluded by 10 C.F.R. § 51.23(b).

CONCLUSION

The State of New York respectfully requests that the Atomic Safety and Licensing Board admit the new bases for NYS Contention 17B.

Respectfully submitted,

s/

Susan L. Taylor
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Dated: January 24, 2011

s/

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**List of Attachments
to State of New York Motion for Leave
to File Timely Amended Bases to Contention 17A
(now to be designated Contention 17B)**

- Attachment 1 10 C.F.R. § 51.23 as it appeared in the January 2010 edition of the Code of Federal Regulations (referred to in the State’s filing of today’s date as “10 C.F.R. § 51.23 (old)”).
- Attachment 2 Volume 48 of the Federal Register, pages 22730-22733 (May 20, 1983), Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactors’ Operating Licenses.
- Attachment 3 excerpt from NUREG-0575, Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, Volume 1, (Aug. 1979) ML022550127 including pages 4-25 – 4-27.
- Attachment 4 Volume 49 of the Federal Register, including pages 34658-34688 (Aug. 31, 1984), Waste Confidence Decision.
- Attachment 5 Volume 53 of the Federal Register including pages 31651-31683 (Aug. 19, 1988), Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High Level Radioactive Waste.
- Attachment 6 Volume 55 of the Federal Register, including pages 38472-38474 (Sept. 18, 1990), Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation.
- Attachment 7 excerpt from the United States Department of Energy Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, Volume I – Impact Analysis, DOE/EIS-0250, February 2002, including pages 2-2 and 2-47.
- Attachment 8 excerpt from an Entergy document entitled Preliminary Decommissioning Cost Analysis for the Indian Point Energy Center, Unit 2, (Enclosure 2 to NL-08-144), prepared by TLG Services, Inc. for Entergy Nuclear, October 2008, ML092260723, including pages 2-4, 9-11, 16-18, 25-27.
- Attachment 9 Volume 75 of the Federal Register, pages 81032-81076, published December 23, 2010, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation & Waste Confidence Decision Update.
- Attachment 10 excerpt from an Entergy document entitled Preliminary Decommissioning Cost Analysis for the Indian Point Energy Center, Unit 3, Document E11-

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1583-006, prepared by TLG Services, Inc. for Entergy Nuclear, December 2010, ML103550608, including pages 8-11.

- Attachment 11 November 29, 2007 Declaration of Dr. Stephen C. Sheppard with accompanying report, *Potential Impacts of Indian Point Relicensing on Property Values*.
- Attachment 12 February 26, 2009 Supplemental Declaration of Dr. Stephen C. Sheppard and accompanying report, *Potential Impacts of Indian Point Relicensing with Delayed Site Reclamation*.
- Attachment 13 February 9, 2010 Supplemental Comments of the State of New York submitted by the Office of the Attorney General in NRC rulemaking proceeding RIN 3150-AI47, NRC-2008-0482, NRC-2008-0404 – Waste Confidence Decision Update and Consideration of Environmental Impacts of Temporary Storage of Spent of Spent Fuel After Cessation of Reactor Operation.
- Attachment 14 March 15, 2010 Supplemental Declaration of Dr. Stephen C. Sheppard and accompanying report, *Determinants of Property Values*).
- Attachment 15 January 24, 2011 Report of Dr. Stephen C. Sheppard in connection with Contention 17B.
- Attachment 16 December 28, 2009 Letter from John P. Boska to Entergy Nuclear Operations, Inc. regarding IP2 decommissioning funding status report, ML093450778.