

RAJ E-500

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	
)	
(Indian Point Nuclear Generating Units 2 and 3))	
)	January 27, 2011

**UNOPPOSED JOINT MOTION OF APPLICANT AND NRC STAFF FOR
LICENSING BOARD ORDER APPROVING ENLARGEMENT OF
PAGE LIMITATION AND ESTABLISHING FILING DEADLINE**

In accordance with 10 C.F.R. § 2.323(a), Entergy Nuclear Operations, Inc. (“Entergy”), applicant in the above-captioned proceeding, and the NRC Staff (jointly, “Movants”) submit this Unopposed Joint Motion requesting that the Atomic Safety and Licensing Board (“Board”) issue an Order taking the following actions. First, the Movants request that the Board approve a 15-page enlargement of the 25-page page limit imposed by paragraph G.1 of the Board’s July 1, 2010 Scheduling Order,¹ insofar as it may apply to any consolidated responses and cross-motions for summary disposition on Consolidated Contention NYS-35/36 to be filed by Entergy and/or the NRC Staff on February 3, 2011. Second, the Movants request that the Board establish February 18, 2011 as the deadline for responses to 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 the State Has Made a *Prima Facie* Case that § 51.23(b) Should Be Waived as Applied to Contention 17B” (“Waiver Petition”), filed on January 24, 2011.

¹ *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 & 3), Licensing Board Scheduling Order at 6 (July 1, 2010) (unpublished) (“Scheduling Order”).*

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Counsel for Entergy and the NRC Staff have consulted with counsel for New York State, which has authorized the Movants to state that it does not oppose the relief or actions requested herein. The specific bases for the Movants' unopposed requests are stated below.

A. Request for Page Enlargement for Cross Motions for Summary Disposition

On January 14, 2011, New York State filed a Motion for Summary Disposition of Consolidated Contention NYS-35/36. The Board has established February 3, 2011 as the deadline for Entergy's and the NRC Staff's responses and cross-motions for summary disposition on NYS-35/36, and February 23, 2011 as the deadline for New York State's responses to any cross-motion for summary disposition on NYS-35/36.² Entergy and the NRC Staff anticipate that they will each (separately) consolidate (1) their respective answers to New York State's January 14, 2011 Motion and (2) their respective cross-motions for summary disposition of NYS-35/36 into single pleadings to be filed by each of them (as opposed to filing their respective responses and cross-motions as separate pleadings). This will result in their filing a total of two pleadings, rather than the four pleadings which they would otherwise file.

Paragraph G.1 of the Board's Scheduling Order states: "Motions and answers to motions shall not exceed twenty-five (25) pages in length . . . absent preapproval of the Board."³ Because Entergy and NRC Staff each intend to consolidate their respective responses and cross-motions into a single filing, they request that the Board extend the page limit for each Movant's consolidated filing to forty (40) pages in these special circumstances. Good cause to exceed the 25-page limitation exists because consolidation of each Movant's respective response and cross-motion

² See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), Licensing Board Order (Establishing Deadline for Filing Responses and Cross-Motions for Summary Disposition of NYS-35/36) (unpublished) (Jan. 21, 2011).

³ Scheduling Order at 6.

(which, if filed separately, could total 50 up to pages in length for each Movant) will avoid duplicative arguments and pleadings on the same topics.

B. Request to Establish February 18, 2011 as the Filing Deadline for Responses to New York State's Waiver Petition and Amended Contention NYS-17B

Because New York State's Waiver Petition is closely linked to the admissibility of proposed amended contention NYS-17B,⁴ establishing a common deadline for responses to the Waiver Petition and the Motion for Leave and Amended Contention, as this Board has done in the past, would simplify the proceeding, promote administrative economy, and avoid potential confusion. The due date for answers to the Motion for Leave and Amended Contention is 25 days from New York State's service thereof, or February 18, 2011.⁵ Although 10 C.F.R. § 2.335(b) grants other parties the right to respond to a waiver request, it does not specify the time period within which such responses must be filed.

In this proceeding—as in other NRC proceedings—the presiding Board has established such a deadline for filing responses to waiver petitions and related contentions by order.⁶ The prior orders in this proceeding, however, do not establish the date by which responses to this Waiver Petition must be filed. Given the absence of any pre-established deadline, the Movants have consulted with New York State, and all parties agree on setting February 18, 2011 as the due date. Such a deadline would allow 25 days for the preparation of responses, which is consistent with the

⁴ See State of New York Motion for Leave to File Timely Amended Bases to Contention 17A (Now to Be Designated Contention 17B) (Jan. 24, 2011) (“Motion for Leave”); State of New York Contention 17B (Jan. 24, 2011) (“Amended Contention”).

⁵ See 10 C.F.R. § 2.309(h)(1); Scheduling Order at 5.

⁶ See, e.g., *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), Licensing Board Order (Clarifying Time for Entergy to File Answer to CRORIP 10 C.F.R. 2.335 Petition) at 1 (Jan. 2, 2008) (unpublished) (ordering responses to be filed 43 days after the waiver petition, the same date that answers to the related contention were due to be filed); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), Licensing Board Order (Authorizing FUSE to Submit a Section 2.335 Petition) at 3 (Nov. 21, 2007) (unpublished) (ordering responses to be filed 28 days after the waiver petition); *Tennessee Valley Authority* (Watts Bar Unit 2), Licensing Board Order (Granting TVA's Unopposed Motion to Set a Deadline for Responses to Waiver Petition) (Feb. 17, 2010) (unpublished) (ordering responses to be filed 25 days after the waiver petition).

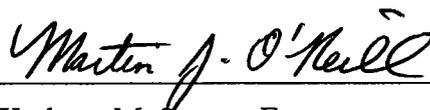
length of time this and other Boards have allowed for responses to waiver requests.⁷ The deadline would also be consistent with the Scheduling Order governing this proceeding, which specifies that, “[w]ithin twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to *all elements* of the motion and contention.”⁸

Accordingly, the Movants request that the Board establish February 18, 2011 as the deadline for responses to New York State’s Waiver Petition.

CERTIFICATION OF COUNSEL UNDER 10 C.F.R. § 2.323(b)

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 the NRC Staff, as a joint movant, and New York State support these requests.

Respectfully submitted,



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COUNSEL FOR ENTERGY NUCLEAR
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Dated in Washington, D.C.
this 27th day of January 2011

⁷ See note 6, *supra*.

⁸ Scheduling Order at 5 (emphasis added).

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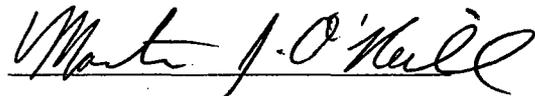
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