

**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. October 17, 2011
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**STATE OF NEW YORK’S MOTION FOR CLARIFICATION
(Board’s October 7, 2011 Order (Procedures for Evidentiary Filings))**

The State of New York respectfully requests clarification of the Atomic Safety and Licensing Board’s recent October 7, 2011 order concerning Procedures for Evidentiary Filings with respect to the Board’s July 1, 2010 Scheduling Order.

Specifically, following the Board’s July 1, 2010 Scheduling Order, the State understood that with respect to pre-filed testimony, exhibits, and statements of position, the parties were required to make their presentations on a “contention-by-contention basis.” July 1, 2010 Scheduling Order at ¶ K1, K2, K3. The State has been organizing its pre-filed presentations in accordance with that July 1, 2010 directive.

While the October 7, 2011 Order does not expressly reference or amend the July 1, 2010 Scheduling Order, the State is concerned that the October 7, 2011 Order could be read as envisioning a different organizational and filing format from that provided in the July 1, 2010 Scheduling Order. The October 7, 2011 Order could be read as anticipating one single omnibus submission from each party commencing with a single exhibit list followed by one combined statement of position for all contentions, to be followed by testimony on all contentions, to be

followed by exhibits on all contentions. October 7, 2011 Order at ¶ A1. Alternatively, the October 7, 2011 Order could be read as silent on this point, in which case the July 1, 2010 Order's contention-by-contention process would remain in place.

The State requests that the Board clarify whether the October 7, 2011 order modified the filing and organizational procedures established by the July 1, 2010 Order. The State also respectfully requests and recommends that the Board retain the contention-by-contention basis established by the July 1, 2010 order for the below reasons.

First, the State anticipates that the pre-filed submissions on the State's admitted contentions (and the combined Riverkeeper's TC-1B contention) will be extensive and involve testimony from various experts and numerous exhibits.¹ In addition, with respect to a few contentions, it is possible that Riverkeeper or the State may reference material that Entergy or Westinghouse has designated as containing confidential material, which, in turn, will involve additional filings and procedures in accordance with the Board's Protective Order. Permitting parties to make their presentations on a contention-by-contention basis will likely allow the State to complete the filing of some of its pre-filed submissions for certain contentions in the days leading up to the filing deadline, thus reducing demands and stress on computer capabilities, the EIE electronic filing system, and paralegals and attorneys on the day of the deadline. Conversely, in this proceeding -- where there are many admitted contentions and amendments thereto -- placing the entirety of the State's multi-contention submissions in a single electronic filing where each document is "linked" to all other documents may cause unintended challenges on the filing date.² Allowing smaller-sized filings on a contention-by-contention basis may

¹ This proceeding will likely involve a relatively larger set of pre-filed submissions than other contested license renewal proceedings.

² Under the EIE process, each document that is submitted by a party must be uploaded

alleviate these concerns.

Second, the State has been operating in accordance with the contention-by-contention format for the past 16 months; moving to a different organizational and filing format will complicate the State's preparation.

REGULATORY BACKGROUND

For the convenience of the Board and the parties, the State provides the following excerpts of the July 1, 2010 Scheduling Order and the October 7, 2011 Order.

The Board's July 1, 2010 Scheduling Order provides:

K. Evidentiary Hearings Filings.

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 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).

and linked to the larger filing through a multi-step process -- document by document.

* * *

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.

July 1, 2010 Scheduling Order (excerpt).

The Board's October 7, 2011 Order (Procedures for Evidentiary Filings) provides:

A. Format of Evidentiary Submissions

1. Each participant's evidentiary submission shall begin with an exhibit list containing four columns: the exhibit's number, the contention(s) addressed by the exhibit, the exhibit's name (including date of creation, if useful), and the exhibit's submission date.³ That exhibit list will constitute each respective participant's first exhibit. Each participant's second exhibit will consist of its statement of position and the third exhibit will be the pre-filed testimony (which, at the participant's option, may be broken into more than one exhibit). This will be followed in numerical order by each of the exhibits supporting that testimony.

October 7, 2011 Order (excerpt) (footnote omitted).

CONCLUSION

The requested clarification will assist the State (and possibly other participants) in preparing for the upcoming pre-filed submissions.

Respectfully submitted,

Signed (electronically) by

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Dated: October 17, 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, Entergy, Riverkeeper, and Clearwater do not oppose the request for clarification.

Signed (electronically) by

John J. Sipos
October 17, 2011

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NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2011, copies of the State of New York's Motion for Clarification (Board's October 7, 2011 Order (Procedures for Evidentiary Filings)), were served upon the following persons via U.S. Mail and e-mail at the following addresses:

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Dated at Albany, New York
this 17th day of October 2011