

**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.	April 2, 2012
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**STATE OF NEW YORK'S AND RIVERKEEPER'S  
RESPONSE AND CROSS-MOTION TO  
NRC STAFF'S MOTION FOR PARTIAL RECONSIDERATION OF THE  
BOARD'S MARCH 16, 2012 ORDER**

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for the State of New York  
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## **PRELIMINARY STATEMENT**

The State of New York and Riverkeeper do not oppose the Staff's request for modifications of the hearing schedule related to Contentions NYS-25 and NYS-38/RK-TC-5; however, the State and Riverkeeper respectfully submit that it would also be appropriate to make additional adjustments to the schedule to assure the most efficient and effective presentation of evidence on the matters raised by those two contentions as well as Contention NYS-26B/RK-TC-1B.

Staff's reconsideration motion proposes to split apart Contention NYS-38/RK-TC-5 and link a portion of that contention to the deferred schedule for Contention NYS-25. Given the evidence and witnesses involved, the State and Riverkeeper believe that it would appropriate to defer the schedule for all of Contention NYS-38/RK-TC-5 as well as Contention NYS-26/RK-TC-1 until the presently-deferred Contention NYS-25 is ready to proceed, and submit that this realignment would have no substantive impact on the proceeding. Accordingly, the State and Riverkeeper hereby file this cross-motion seeking the Atomic Safety and Licensing Board's placement of Contention NYS-26/RK-TC-1 and the remainder of Contention NYS-38/RK-TC-5 on to the second hearing track that exists for Contention NYS-25.

## **SUMMARY OF RELATED RULINGS AND FILINGS**

### **The Board's February 16, 2012 Ruling and Contention NYS-25**

On February 16, 2012, the Atomic Safety and Licensing Board issued an order deferring prefiled submissions on Contention NYS-25. *Entergy Nuclear Operations, Inc.*, (Indian Point Nuclear Generating Units 2 and 3), Order (Granting NRC Staff's Unopposed Time Extension Motion and Directing Filing of Status Updates) (Feb. 16, 2012) ML12047A308. The Board issued this order following NRC Staff's disclosure stating that Staff would be conducting

additional regulatory review of the age-related degradation of reactor pressure vessel internals.<sup>1</sup>

“Because of the current dynamic nature of the NRC Staff’s uncompleted safety reviews, we place Contention NYS-25 on the second hearing track that already includes NYS-38/RK-TC-5 and RK-EC-8.” *Id.*, at 2.

### **The Board’s March 16, 2012 Ruling**

On March 16, 2012, the Atomic Safety and Licensing Board issued a ruling on the State’s motion to compel compliance with disclosure obligations. *Entergy Nuclear Operations, Inc.*, (Indian Point Nuclear Generating Units 2 and 3), Order (Granting in Part and Denying in Part State of New York and Riverkeeper’s Motion to Compel) ML12076A156. At the conclusion of the decision, the Board also established a schedule for prefiled submissions on Contention NYS-38/RK-TC-5. *Id.*, at 12. That schedule requires the State and Riverkeeper to make their prefiled submissions by April 30, 2012, Entergy and NRC Staff to make their responsive prefiled submissions by May 30, and the State and Riverkeeper to make any reply submissions by June 10, 2012. *Id.*

The Board’s March 16, 2012 scheduling order provided the State and Riverkeeper with six weeks from March 16 to prepare their case in chief on Contention NYS-38/RK-TC-5. Unfortunately, starting on March 18, Dr. Lahey was out of the country and unavailable for two weeks, and he is unavailable for 10 days in April.

### **NRC Staff’s Motion for Reconsideration**

On March 22, 2012, NRC Staff informed the State that it intended to file a motion later that same day to adjust the prefiled submission schedule for a portion of NYS-38/RK-TC-5. The State and Riverkeeper did not, and do not, oppose Staff’s proposal. Specifically, Staff

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<sup>1</sup> Letter from NRC Staff Counsel to Atomic Safety and Licensing Board (Jan. 27, 2012) at 1.

sought to defer a portion of NYS-38/RK-TC-5 that concerns Entergy's proposed approach to the age related degradation of reactor pressure vessel internals at the Indian Point facilities. NRC Staff's Motion for Partial Reconsideration and/or Clarification of the Board's Order of March 16, 2012 (March 22, 2012), at 3-4.

Following submission of the Staff's motion, the State identified further potential adjustments to the schedule that could provide for an orderly presentation of testimony on Contentions NYS-25, NYS-26/RK-TC-1, and NYS-38/RK-TC-5 as well as conserve resources. Accordingly, on March 23, 2012, the State initiated consultation on its proposal to defer Contention NYS-26/RK-TC-1 and the remainder of Contention NYS-38/RK-TC-5 on March 23, 2012. Given the impending filing deadline for NRC Staff and Entergy for prefiled submissions, the parties postponed additional consultation until today – the first business day following those filings.

During today's consultation, NRC Staff and Entergy opposed intervenors' proposal contained in this cross-motion. However, during the consultation, the parties expressed their collective understanding that responses to this joint response/cross-motion may be filed within 10 days under 10 C.F.R. § 2.323(c), instead of the one day response period provided by the Scheduling Order, ¶ G-5.

#### **NRC Staff's April 2, 2012 Update of Anticipated Staff Schedule**

Today, the NRC Staff filed its monthly update with the Atomic Safety and Licensing Board and parties. *See* NRC Staff's April 2012 Monthly Report Regarding the Schedule for Review of the Indian Point Units 2 and 3 License Renewal Application (Apr. 2, 2012). Staff anticipates that it will issue the Safety Evaluation Report Supplement ("SSER") for reactor pressure vessel internals in August 2012. *Id.* After this SSER is completed, Staff would then

proceed to prepare its prefiled testimony and other submissions concerning Contention NYS-25.

### **REASONS SUPPORTING THE STATE AND RIVERKEEPER'S CROSS-MOTION**

In his Prefiled Direct Testimony and Report in support of Contentions NYS-25 and NYS-26/RK-TC-1, the State's expert, Dr. Richard T. Lahey, Jr., discusses the synergistic effects of age-related degradation mechanisms including embrittlement, fatigue, and corrosion on various components, structure and fittings of nuclear reactors including important reactor piping and nozzle components, the reactor pressure vessel and pressure boundary, and the reactor pressure vessel internals. *See, e.g.*, Report of Dr. Richard T. Lahey, Jr. in Support of Contentions NYS-25 and NYS-26B/RK-TC-1B (Dec. 20, 2011) at ¶¶ 12, 13, 16, 19, 20, 22, 25, 26, 27, 39 (Exhibit NYS000296); Pre-filed Written Testimony of Richard T. Lahey, Jr. Regarding Contention NYS-25 (Dec. 22, 2011) at 36 (Exhibit NYS000294); Pre-filed Written Testimony of Richard T. Lahey, Jr. Regarding Contention NYS-26B/RK-TC-1B (Dec. 22, 2011) at 38 (Exhibit NYS000299). Dr. Lahey also discusses how various decompression and thermal shock loads can affect these various systems, structures, and components. *See, e.g.*, Report of Dr. Richard T. Lahey, Jr. in Support of Contentions NYS-25 and NYS-26B/RK-TC-1B at ¶¶ 23, 24, 36. As discussed in his report and testimony, Dr. Lahey is concerned about the phenomena whereby related aging mechanisms and components are examined separate and apart from one another (*i.e.*, in "silos"), and that it has been implicitly assumed that there is no interaction between them. Dr. Lahey's report and prefiled testimony on NYS-25 and NYS-26B/RK-TC-1B underscore Dr. Lahey's perception of the interrelation between the age-related degradation mechanisms and the various systems, structures, and components identified and discussed in these two contentions. *See, e.g.*, Pre-filed Written Testimony of Richard T. Lahey, Jr. Regarding Contention NYS-26B/RK-TC-1B at 12.

Dr. Lahey will be the State's principal witness with regard to Contention NYS-26B/RK-TC-1B. He will also likely testify for the State in connection with Contention NYS-38/RK-TC-5. Thus, Dr. Lahey will be testifying on three interrelated contentions – NYS-25, NYS-26B/RK-TC-1B, and NYS-38/RK-TC-5 – and it would be most resource-efficient for the State, and most efficient for Dr. Lahey's schedule, to handle simultaneously future filings and the evidentiary hearing on those matters on which Dr. Lahey is a witness, particularly in light of certain periods of unavailability. In addition, while it is true that certain issues raised by NYS-38/RK-TC-5 are related to NYS-25, it is also true that in order to have a full picture of the issues raised by NYS-38/RK-TC-5 testimony and analysis relating to those issues will necessarily address matters that relate to all of NYS-38/RK-TC-5's bases, particularly the broader concerns raised by that contention regarding proceeding with licensing in the face of incomplete aging management programs. Isolating portions of NYS-38/RK-TC-5 that relate to Entergy and NRC's deferred approach to the age-related degradation of reactor pressure vessel internals will make presentation of the intervenors' testimony on the remainder of NYS-38/RK-TC-5 in a cohesive and persuasive format difficult, if not impossible.

Thus, the State and Riverkeeper supports the Staff's proposal to align NYS-38 with NYS-25's schedule, but also propose that the Board postpone all remaining testimony on NYS-26B/RK-TC-1B, until Staff and Entergy have completed their efforts to resolve Staff concerns regarding the issues raised by NYS-25. That resolution could result in addressing the concerns raised by NYS-38/RK-TC-5 as it relates to embrittlement of RPV internals and might even substantially narrow the concerns in NYS-25. The resolution could possibly also address the synergism between embrittlement and metal fatigue that forms a substantial portion of the concerns raised by Dr. Lahey in his Prefiled Testimony on NYS-25 and NYS-26B/RK-TC-1B.

The State and Riverkeeper also note that if the schedule Staff proposes results in a “two track” hearing, which seems more likely given today’s status report, experts such as Dr. Lahey could be called to travel to the location of the hearing during multiple occasions, as well as multiple preparatory sessions on interrelated components and aging issues. The State and Riverkeeper respectfully submit this would be wasteful of intervenor resources and would ill-serve judicial economy.

### **CONCLUSION**

In sum, the State and Riverkeeper support Staff’s request for a modification of the schedule, but also believe the modification should be expanded to recognize the interrelation between NYS-25, NYS-26B/RK-TC-1B, and NYS-38/RK-TC-5 by postponing testimony from all parties on the entirety of NYS-38 instead of just a portion of it, and on NYS-26B/RK-TC-1B, until after NRC Staff and Entergy have resolved the issues related to RPV internals.

Respectfully submitted,

*Signed (electronically) by*

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April 2, 2012

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### **10 C.F.R. § 2.323 Certification**

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 scheduling order, that with respect to the NRC Staff's Motion for Reconsideration I certify that I have made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been successful and the State does not oppose the Staff's Motion for Reconsideration.

As to the State and Riverkeeper's Cross-Motion regarding the proposed change to the schedule for Contention NYS-26/RK-TC-1 and the remainder of Contention NYS-38/RK-TC-5, 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 my efforts have been unsuccessful.

The parties are in agreement that pursuant to 10 C.F.R. § 2.323(c), Entergy and NRC Staff may have 10 days to file a response to the cross-motion, instead of the one day period provided by Scheduling Order, ¶ G-5.

***Signed (electronically) by***

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John J. Sipos  
Assistant Attorney General  
State of New York

dated: April 2, 2012



**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. April 2, 2012  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2012, copies of the State of New York and Riverkeeper's Joint Response and Cross-Motion to NRC Staff's Motion For Partial Reconsideration of the Board's March 16, 2012 Order were served electronically via the Electronic Information Exchange on the following recipients:

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Dated at Albany, New York  
this 2nd day of April 2012