

August 6, 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION FOR EXTENSION OF TIME  
TO RESPOND TO APPLICANT'S MOTION FOR DECLARATORY ORDER AND  
MEMORANDUM CONCERNING THE COASTAL ZONE MANAGEMENT ACT

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff ("Staff") hereby requests an extension of time, until October 1, 2012, or any later date that may be established for the filing of answers by other parties in this proceeding,<sup>1</sup> to respond to the motion and memorandum filed by Entergy Nuclear Operations, Inc. ("Applicant" or Entergy") concerning satisfaction of the consistency review requirements of the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451, *et seq.*<sup>2</sup> As discussed *infra* at 3, the Staff has discussed the instant motion for extension of time with the Counsel for Applicant, the State of New York ("New York"), Riverkeeper, Inc. ("Riverkeeper"), and Hudson River Sloop Clearwater, Inc. ("Clearwater") (collectively, "Intervenors"), none of whom has expressed opposition to this motion. In support of this request, the Staff states as follows:

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<sup>1</sup> The Staff notes that the State of New York has requested an extension of time until November 8, 2012, to file its answer to the Applicant's motion. See "State of New York Motion for Extension of Time to Respond to Entergy's Motion for Declaratory Order Regarding the Coastal Zone Management Act" (Aug. 6, 2012), at 1. During consultations between the parties, Counsel for the Staff opposed New York's requested extension of 90 days and sought agreement on a shorter extension for all parties.

<sup>2</sup> "Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order that It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Units 2 and 3 for Renewal of Operating Licenses" (Motion) (July 30, 2012).

1. On July 24, 2012, Entergy filed an amendment to the Environmental Report submitted as part of its license renewal application (“LRA”), to reflect its conclusion that license renewal for Indian Point Units 2 and 3 (“IP2” and “IP3”) “is not subject to further consistency review by New York State because renewal will not result in coastal effects that are ‘substantially different’ than the effects previously reviewed by the State.” Motion at 2, *citing* 15 C.F.R. § 930.51(b)(3).

2. On July 30, 2012, Entergy filed the instant Motion and Memorandum, requesting that the Atomic Safety and Licensing Board (“Board”) issue “a declaratory order that further consistency review is neither necessary nor appropriate for renewal of the IP2 and IP3 operating licenses.” Motion at 3. In accordance with 10 C.F.R. § 2.323(c), answers to Entergy’s Motion are due on or before August 9, 2012.

3. Entergy’s Motion and Memorandum raise important issues that require a detailed factual and legal review of pertinent documents and legal authority, including a review of past CZMA certifications for IP2 and IP3, as well as the CZMA and implementing regulations issued by the U.S. Department of Commerce and the State of New York. These matters require sufficient time for review before the Staff is able to state its position.

4. In addition, the Staff is considering the need to issue requests for additional information (“RAIs”) to the Applicant, concerning its July 24, 2012, amendment to its LRA. In the event that the Staff decides to issue such RAIs, sufficient time will be required for Entergy to respond thereto and for the Staff to consider those responses prior to filing its position on Entergy’s motion and memorandum.

5. Further, the Staff is or soon will be engaged in other regulatory activities concerning the IP2/IP3 LRA, including consultations with the National Marine Fisheries Service (“NMFS”) on Endangered Species Act issues and review of any public comments on the Staff’s

draft Supplement to the Final Supplemental Environmental Impact Statement ("FSEIS") in this proceeding.

6. Finally, the Staff is and/or soon will be engaged in numerous other litigation tasks in this proceeding, including preparation of (a) the Staff's testimony and statement of position on Contention NYS-38 (due August 20, 2012), (b) proposed Board questions on all Track 1 contentions (due August 29, 2012), and (c) preparation for evidentiary hearings, scheduled to be held October 15-24, 2012.

7. In light of the above, the Staff has determined that it requires an extension of time of approximately 53 days, until October 1, 2012, to file its answer to the Applicant's Motion. Further, however, in the event that the Board affords a longer period of time for other parties to respond to the Applicant's motion and memorandum, the Staff requests that it be afforded an equal amount of time in which to file its response, such that a uniform date be established for filing of the Staff's and other parties' answers to the Applicant's Motion.

8. In accordance with 10 C.F.R. § 2.323(b), Staff Counsel has contacted Counsel for the Applicant, New York, Riverkeeper, and Clearwater. Counsel for the Applicant stated that Entergy consents to the Staff's request. Counsel for New York, Riverkeeper and Clearwater stated that they take no position on the Staff's motion.

9. The Staff respectfully submits that the instant request for an extension of time is not unreasonable under the circumstances, and will not cause hardship for any party or substantial delay in the proceeding. Further, this extension of time will not affect the hearing on Track 1 contentions (scheduled to commence on October 15, 2012) and will not interfere with or overlap any currently-scheduled filings concerning Track 1 hearing contentions.

WHEREFORE, the Staff respectfully requests that it be afforded an extension of time, until October 1, 2012, in which to file its answer to the Applicant's motion and memorandum, or until such later date, if any, that may be established for the filing of other parties' answers thereto.

Respectfully submitted,

**Signed Electronically by**

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Dated at Rockville, Maryland  
this 6th day of August 2012

CERTIFICATION OF COUNSEL

Pursuant to 10 C.F.R. § 2.323(b), the undersigned attorney hereby certifies that he has made a sincere effort to contact the other parties to this proceeding to resolve the issues raised in this Motion, and that his efforts to resolve this issue have been successful, in part, to the extent set forth above.

**Signed Electronically by**

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO APPLICANT'S MOTION FOR DECLARATORY ORDER AND MEMORANDUM CONCERNING THE COASTAL ZONE MANAGEMENT ACT," dated August 6, 2012, in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 6<sup>th</sup> day of August, 2012.

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