

August 7, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO "STATE OF NEW YORK
MOTION FOR EXTENSION OF TIME TO RESPOND
TO ENERGY'S MOTION FOR DECLARATORY ORDER
REGARDING THE COASTAL ZONE MANAGEMENT ACT"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff ("Staff") hereby responds to the State of New York's ("New York") request for a 91-day extension of time (until November 8, 2012),¹ to respond to Entergy Nuclear Operations, Inc.'s ("Applicant" or "Entergy") motion for a declaratory order concerning satisfaction of the consistency review requirements of the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451, *et seq.*² For the reasons set forth below, the Staff opposes New York's Motion, but requests that if New York's Motion is granted, that an equal amount of time be afforded for the filing of the Staff's answer to the Applicant's Motion and Memorandum.³

¹ "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) ("Motion"), at 1.

² "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" (July 30, 2012) ("Applicant's Motion and Memorandum").

³ The Staff notes that the Applicant has filed an answer in opposition to New York's Motion. See "Entergy's Opposition to New York State's Motion for Extension of Time" (Aug. 7, 2012).

DISCUSSION

In its Motion, New York states four distinct bases for its request for an extension of time:

(1) Intervenors have numerous existing pre-hearing deadlines and ongoing pre-hearing preparation work, of which Entergy was well aware when it filed this motion, (2) Entergy's motion is based on critical documents it has not identified or provided (the supposed consistency determinations it alleges the New York State Department of State issued in 2000 and 2001), and (3) Entergy's new counsel inappropriately terminated consultations even though counsel for the State articulated clear reasons why such an action was unwarranted and prejudicial, and (4) Entergy has articulated no reason why this motion should be heard prior to the long-scheduled Track One contentions, given that Entergy could have filed this motion (or its application for a Coastal Zone consistency determination) at any point since it filed its License Renewal Application in 2007.

Motion at 1-2 (footnote omitted). The Staff respectfully submits that New York has not supported these claims with sufficient facts to show that a 91-day extension of time, rather than some shorter extension, is required.

First, like New York, the Staff recognizes that the current hearing schedule in this proceeding requires New York and other intervenors, as well as the Staff and Applicant, to meet "numerous existing pre-hearing deadlines and [perform] ongoing pre-hearing preparation work," and that "Entergy was well aware" of these requirements when it filed its motion. See Motion at 1. That said, there is no reason why the existing hearing schedule should preclude the filing of Entergy's motion, any more than it should preclude New York and other intervenors from filing new and amended contentions – as they have repeatedly done in this proceeding; indeed, New York and other intervenors filed two new contentions just one month ago (to which Entergy and the Staff responded on August 2 and 3, 2012), without concern over the litigation tasks facing them or other parties. Further, while New York cites nine specific pending litigation deadlines and other tasks that it must complete (Motion at 4-5), all but one of those items (*i.e.*, preparation of its witnesses) are required be complete by the end of August, just three weeks

from now. New York fails to show why these deadlines mandate a 91-day extension of time for filing its response, rather than some shorter (or even longer) period.

Second, New York's claim that "Entergy's motion is based on critical documents it has not identified or provided" (Motion at 1) does not support its claimed need for a 91-day extension of time. To the contrary, if New York requires documents to be identified or produced, no reason appears why it cannot request such identification or production from Entergy. Further, New York has not shown that its need for such documents to be "identified or produced" supports an extension of 91 days versus some other period of time.

Third, while New York claims that "Entergy's new counsel inappropriately terminated consultations even though counsel for the State articulated clear reasons why such an action was unwarranted and prejudicial" (Motion at 1-2), that assertion does not support its request for a 91-day extension of time. Even if New York is correct in its claim that consultations had not been completed on the Applicant's proposed Motion before that pleading was filed, any continuation of those consultations might have afforded New York, at most, a few more days in which to further develop its views on the Applicant's Motion. Thus, New York's claim does not show why it requires 91 days to prepare and file its answer. Moreover, whatever may be the merits of New York's claims regarding Entergy's termination of consultations, those arguments are irrelevant to New York's request for a 91-day extension of time and should be disregarded.⁴

Finally, New York's claim that "Entergy has articulated no reason why this motion should be heard prior to the long-scheduled Track One contentions given that Entergy could have filed this motion . . . at any point since it filed its License Renewal Application in 2007" (Motion at 2;

⁴ Entergy has responded to New York's claims that consultations were terminated prematurely. See Entergy's Answer at 2-3 and 5-7. As a participant in the consultations that were conducted, the Staff is aware that New York expressed opposition to Entergy's proposed motion and sought to continue those consultations. Nonetheless, given the differences of opinion that were expressed by New York and Entergy, the Staff believes it had already become apparent that no agreement was likely to be reached on Entergy's proposed motion, even if the consultations were continued; accordingly, the Staff believes that continued consultations were unlikely to achieve resolution on the issues raised in Entergy's proposed motion, as contemplated in 10 C.F.R. § 2.323(b).

emphasis added) does not support its request for a 91-day extension of time. Thus, regardless of whether Entergy could have filed its Motion sooner, New York provides no reason to believe that Entergy was required to do so. Moreover, New York's claim provides no reason to believe that an extension of time of fully 91-days is appropriate, based on the timing of Entergy's filing.

CONCLUSION

New York has not demonstrated any reason why it should be afforded a 91-day extension of time in which to respond to Entergy's Motion and Memorandum on CZMA issues. New York seeks an excessive extension of time,⁵ which would likely cause unnecessary delay in the resolution of this issue. New York's request should therefore be denied.⁶

Respectfully submitted,

Signed Electronically by

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Dated at Rockville, Maryland
this 7th day of August 2012

⁵ Cf. "Order (Denying New York's Motion for an Extension of Time)" (Oct. 7, 2011), at 3 (denying New York's request for at least a 90-day extension of time for the filing of its statement of position and testimony on all contentions, where the intervenors' filing of new contentions on a Supplement to the Staff's Safety Evaluation Report automatically afforded them a 51-day extension of time, and "any further extension at this time would be excessive").

⁶ The Staff notes that it has also sought an extension of time, of approximately 53 days (until October 1, 2012), or such later time that may be afforded to New York and other parties, to respond to the Applicant's Motion. See "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" (Aug. 6, 2012), at 1 and 2-3. In the event that the Board affords a longer period of time for New York and other parties to respond to the Applicant's Motion, the Staff requests that it be afforded an equal amount of time in which to file its response, such that a uniform date is established for all answers to the Applicant's Motion.

CERTIFICATION OF COUNSEL

Counsel for the Staff certifies that he has made a sincere effort to make himself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been unsuccessful.

Respectfully submitted,

/Signed (electronically) by/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO "STATE OF NEW YORK MOTION FOR EXTENSION OF TIME TO RESPOND TO ENTERGY'S MOTION FOR DECLARATORY ORDER REGARDING THE COASTAL ZONE MANAGEMENT ACT,"" dated August 7, 2012, in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 7th day of August, 2012.

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