

August 27, 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 ANSWER TO "STATE OF NEW YORK MOTION
FOR EXTENSION OF TIME TO FILE NEW CONTENTIONS, IF ANY,
ON ENTERGY'S ENVIRONMENTAL REPORT 'SUPPLEMENT'
REGARDING THE COASTAL ZONE MANAGEMENT ACT"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c) and the Atomic Safety and Licensing Board's ("Board") Order of August 21, 2012,¹ the NRC Staff ("Staff") hereby responds to the State of New York's ("New York") motion for an extension of time to file new contentions, if any, on issues related to the Coastal Zone Management Act ("CZMA").² Specifically, New York requests an extension of time, of at least six months, to file any new contentions related to the amended discussion of CZMA issues contained in Entergy Nuclear Operations, Inc.'s ("Applicant" or "Entergy") July 24, 2012 amendment to its Environmental Report ("ER").³ As set forth below, the Staff does not oppose the grant of a reasonable extension of time, for example until January 14, 2013, for New

¹ "Order (Concerning State of New York's Motion for Extension of Time to File New Contentions)" (Aug. 21, 2012), at 2 (directing that answers to New York's Motion be filed by August 30, 2012).

² "State of New York Motion for Extension of Time to File New Contentions, If Any, on Entergy's Environmental Report 'Supplement' Regarding the Coastal Zone Management Act" (Aug. 20, 2012) ("Motion"), at 1.

³ Letter from Fred R. Dacimo (Entergy) to NRC Document Control Desk, Subject: "Supplement to License Renewal Application - Compliance with Coastal Zone Management Act" (NL-12-107) (July 24, 2012) (ADAMS Accession No. 12207A122).

York to file such contentions; the Staff, however, opposes New York's instant request for an extension of time beyond that date as unreasonable and excessive.

BACKGROUND

On July 24, 2012, Entergy filed an amendment to its ER, in which it stated (a) that Indian Point Units 2 and 3 ("IP2" and "IP3") "have already obtained the necessary consistency reviews from the State of New York," (b) that license renewal will not result in coastal effects that are substantially different than the effects previously reviewed by New York State and found to be consistent with the applicable policies of the New York Coastal Management Plan ["NYCMP"], (c) that IP2 and IP3 therefore "require no further consistency determinations associated with license renewal," and (d) that the NYCMP "exempts both plants from further consistency review."⁴ On July 30, 2012, Entergy filed a motion requesting that the Board issue a Declaratory Order that no further determination of consistency with the NYCMP is required, in accordance with 15 C.F.R. § 930.51(b)(3).⁵

On August 6, 2012, New York filed a motion seeking a 91-day extension of time (until November 8, 2012) to respond to Entergy's CZMA Motion,⁶ in addition, the Staff requested an extension of time of 53 days (until October 1, 2012) to respond to Entergy's CZMA Motion.⁷ On

⁴ Enclosure 1 to NL-12-107, ER Section 9.3 (ADAMS Accession No. 12207A122). Entergy's submittal also revised ER Table 9-2, deleted ER Appendix D ("Coastal Management Program Consistency Determination") in its entirety, and deleted language in ER Section 9.3 which had stated, "Entergy will submit an application for a Coastal Zone Consistency Certification (see Attachment D) to the NYSDOS . . . in fulfillment of the regulatory requirement for submitting a copy of the coastal zone consistency certification to the appropriate state agency." *Id.*

⁵ "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 the Operating Licenses" (July 30, 2012) ("Entergy's CZMA Motion").

⁶ "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.

⁷ 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 3.

August 8, 2012, the Board granted these motions and extended the time for filing answers to the Applicant's CZMA Motion until January 14, 2012, "to avoid potential conflicts with hearing-related matters."⁸

In its current Motion, New York requests a further extension of time to file new contentions, if any, concerning the Applicant's July 24, 2012 amendment to its Environmental Report. Specifically, New York requests that the time for filing such contentions be extended from August 23, 2012, until "30 days after the Board rules on Entergy's application for a declaratory ruling on CZMA issues. Motion at 1. On August 21, 2012, the Board granted New York's Motion "until further order of the Board;" further, the Board directed Entergy and the Staff to respond to New York's Motion by August 30, 2012, and stated that it will rule on New York's Motion after it has reviewed those responses.⁹

DISCUSSION

In support of its current request, New York asserts that (a) the Staff issued requests for additional information ("RAIs") concerning CZMA issues on August 13, 2012, (b) the issues "may be resolved via the Motion for Declaratory Order," and (c) "the Board has expressed its preference to hear CZMA-related issues after the upcoming evidentiary hearings," *Id.* at 2. According to New York, an extension until after the Board rules on Entergy's CZMA Motion would "prevent potentially superfluous and duplicative filings on the same issue," *Id.*, and "avoid any potential conflicts with hearing-related matters." *Id.* at 3, *quoting* Order of August 8, 2012.

The Staff respectfully submits that New York's request to file contentions after the Board rules on Entergy's CZMA Motion is unreasonable. First, the Board has already afforded New York, the Staff, and other parties a five-month extension of time to respond to Entergy's CZMA

⁸ "Order (Granting, in Part, the NRC Staff's and New York's Motions for Extension of Time)" (Aug. 8, 2012), at 2.

⁹ "Order (Concerning State of New York's Motion for Extension of Time to File New Contentions)" (Aug. 21, 2012).

Motion. By the time New York files its response to Entergy's CZMA Motion, it is likely that Entergy will have filed its responses to the Staff's pending RAIs,¹⁰ and that New York's (as well as the Staff's) views will have crystallized concerning Entergy's CZMA-related amendment to its ER. New York has not provided any reason to believe it would be unable to frame any new contentions on these issues by the time it files its response to Entergy's CZMA Motion.

Second, it is unclear that an extension of time until after the Board rules on Entergy's CZMA Motion will necessarily avert "potentially superfluous and duplicative" filings. If the Board rules against Entergy's Motion, the State would likely have to file the contentions it seeks to delay; on the other hand, if the Board rules in favor of Entergy, New York might still file new contentions on any issues not directly addressed by the Board's decision.

Third, the Commission has clearly stated its policy that NRC adjudicatory proceedings be conducted in an "expeditious" manner, without "unnecessary delays."¹¹ Given the nature and complexity of the issues raised in Entergy's CZMA Motion, as well as the volume of exhibits filed in support thereof, it is possible that the Board may require a longer time than normal to rule on that motion. Assuming (hypothetically) that a decision on Entergy's Motion is rendered 60 days after the parties file their responses thereto, a Board decision would be issued on March 15, 2013, and an extension of time to file new contentions 30 days thereafter would result in a filing date of April 15, 2013 – almost nine months after Entergy filed its ER amendment, and far longer than the typical 30-day period allowed for filing timely contentions. New York's suggestion that new contentions be deemed "timely" if filed 30 days after the Board rules on Entergy's Motion is unreasonable and contrary to the Commission's Statement of Policy.

¹⁰ "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review (TAC Nos. MD5411 AND MD5412)" (Aug. 13, 2012) (ADAMS Accession No. ML12221A155). As set forth therein, the Applicant is to submit its RAI responses within 30 days from the date of the letter. *Id.* at 2.

¹¹ "Statement of Policy on Conduct of Adjudicatory Proceedings," CLI-98-12, 48 NRC 18, 19, 24 (1998) ("Statement of Policy").

Finally, New York has not shown that its requested extension of time is required to avert any unusual burden or that any specific conflict exists that would prevent it from filing new contentions in a timely manner. While the Staff would not oppose a reasonable extension of time for the filing of new contentions – for example, until January 14, 2013, to coincide with the date set for the parties’ responses to Entergy’s CZMA Motion – New York’s request to extend the date for new contentions until 30 days after the Board has ruled on Entergy’s Motion is unreasonable and excessive.¹² Its request, therefore, should be denied.

CONCLUSION

New York has not demonstrated any sufficient reason to support its request that it be afforded an extension of time until 30 days after the Board has ruled on Entergy’s CZMA Motion, in which to file new contentions concerning Entergy’s July 24, 2012 amendment of its Environmental Report on CZMA issues. Its request, therefore, should be denied.

Respectfully submitted,

Signed Electronically by

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Dated at Rockville, Maryland
this 27th day of August 2012

¹² 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”).

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,

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Dated at Rockville, Maryland
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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 FILE NEW CONTENTIONS, IF ANY, ON ENTERGY'S ENVIRONMENTAL REPORT 'SUPPLEMENT' 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 27th day of August, 2012.

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