

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 JOINT MOTION TO AMEND THE  
SCHEDULING ORDER FOR RESPONSIVE PRE-FILED SUBMISSIONS IN  
SUPPORT OF CONTENTION NYS-38/RK-TC-5

INTRODUCTION

Pursuant to the 10 C.F.R. § 2.323(b) and the Atomic Safety and Licensing Board's ("Board's") Scheduling Order, at ¶ G.5 (July 1, 2010) (unpublished), and Order (Denying New York's Motion for an Extension of Time), at 4 (Oct. 7, 2011) (unpublished), the Staff of the Nuclear Regulatory Commission ("Staff") hereby files this answer opposing the August 24, 2012 Joint Motion by State of New York, State of Connecticut, and Riverkeeper (together, "Movants") to Amend the Scheduling Order for Responsive Pre-filed Submissions in Support of Contention NYS-38/RK-TC-5 ("Motion").

The State of New York ("New York") and Riverkeeper, Inc. ("Riverkeeper") request an extension of time for the submission of optional rebuttal testimony, exhibits, and revised statement of position from August 30, 2012 to October 4, 2012. Motion at 1. The State of Connecticut ("Connecticut") requests a similar extension for its optional filing on this contention as an interested state. *Id.* Entergy opposes the extension. Entergy's Answer Opposing Motion for Extension of Time (Aug. 27, 2012) ("Entergy's Answer").

ARGUMENT

The Staff opposes the extension to October 4 because of the potential to conflict with the upcoming hearing in New York. As the Staff explained to State of New York during consultation process which preceded the motion,

The Board had allowed ten days (eight working days) for your rebuttal, such that it would be filed on August 30. From your e-mail, I understand that Dr. Lahey and Dr. Hopenfeld are unavailable for three and four of those eight business days, respectively. The Staff understands your need to change due dates to accommodate for these lost business days. However, the proposed date of October 4 is too near the start of the hearings, during which time the Staff will be very busy, and would not provide sufficient time for the Staff to review your rebuttal filings and file (if needed) any motions in limine. That would put an unfair burden on the Staff and could prejudice our right to file a motion in limine if needed. Thus, the Staff cannot support an extension to October 4. Still, in the interest of accommodating your needs, the Staff would be willing to consider a shorter extension, that does not unfairly result in the Staff having to review your rebuttal in the midst of final hearing preparations. The most I could agree to would be an extension until Monday, September 17.

E-mail from David Roth to Janice Dean, *et. al*, (Aug. 23, 2012).

Entergy provided six arguments in opposition to the Motion. Entergy Answer at 4-7. First, Entergy asserted that deadlines have long been established. *Id.* at 4. The Staff agrees that potential conflicts should have been addressed sooner, and Movants do not explain why the conflicts were not previously resolved. Second, Entergy argues that the time addition is excessive. *Id.* The Staff agrees the 45 days for optional rebuttal filing is unwarranted and disproportionate. Third, Entergy argues, and the Staff agrees, that the proposed new filing date will preclude hearing Contention NYS-38/RK-TC-5 this year. *See id.* at 5. Fourth, Entergy argues that the claims in the Motion regarding the size of recent disclosures are misleading. *Id.* at 5-6. Without taking a position on whether Movants are "misleading" with respect to recent

disclosures or "total pages" filed<sup>1</sup> or produced, the Staff agrees that the size of the filings made by Entergy and the Staff should have been anticipated based on the broad issues encompassed by Contention NYS-38/RK-TC-5. Fifth, Entergy argues, and the Staff agrees, that the extension is disproportionate to actual time the Movants' witness are unavailable. See *id.* at 6-7.<sup>2</sup>

CONCLUSION

For the reasons set forth above, the Motion should be denied.

Respectfully submitted,

**/Signed Electronically by/**

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<sup>1</sup> Based on limited verification, the Staff determined that Movants undercounted the testimony filed by the Staff by about fifty pages.

<sup>2</sup> The Staff takes no position on Entergy's sixth point regarding Entergy's past offers of alternative dates. See Entergy's Answer at 7.

CERTIFICATION OF COUNSEL

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 unsuccessful.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 27<sup>th</sup> day of August 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR OPERATIONS, INC. ) Docket Nos. 50-247/286-LR  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NRC STAFF'S ANSWER TO JOINT MOTION TO AMEND THE SCHEDULING ORDER FOR RESPONSIVE PRE-FILED SUBMISSIONS IN SUPPORT OF CONTENTION NYS-38/RK-TC-5," dated August 27, 2012, in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 27<sup>th</sup> day of August, 2012.

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