

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	August 28, 2012

**ENTERGY NUCLEAR OPERATIONS, INC.’S ANSWER  
OPPOSING NEW YORK STATE’S MOTION FOR  
EXTENSION OF TIME TO FILE NEW CONTENTIONS**

The State of New York’s motion for an extension of the time to file a contention in response to Entergy Nuclear Operations, Inc.’s (“Entergy”) LRA Supplement concerning the Coastal Zone Management Act (“CZMA”) should be denied. The motion fails to “demonstrate appropriate cause”<sup>1</sup> for extending the deadline until 30 days *after* this Board rules on Entergy’s Motion for Declaratory Order concerning the same issue that would be the subject of the contention.<sup>2</sup> During the Section 2.323(b) consultation, both Entergy and the Staff offered New York an extension of the current deadline to January 14, 2013,<sup>3</sup> the same date on which New York’s response to Entergy’s Motion for Declaratory Order is due. New York rejected this proposal and proceeded to file the current motion.

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<sup>1</sup> Scheduling Order, at 7 (July 1, 2010).

<sup>2</sup> “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.

<sup>3</sup> Entergy does not concede that separate contentions, in addition to New York’s answer to Entergy’s motion, are appropriate and reserves its right to oppose any motion for leave to file such contentions.

*First*, any contention filed *after* the Board rules would almost certainly be superfluous, moot, or both. In deciding Entergy's Motion for Declaratory Order, the Board will necessarily decide whether Entergy's LRA Supplement has merit or not, and it is difficult to conceive of any issue that might remain unresolved that would give rise to an admissible contention. Accordingly, the Board should reject New York's request to litigate this issue in an inefficient, piecemeal manner.

*Second*, contrary to New York's suggestion, the Requests for Additional Information ("RAIs") submitted to Entergy by the NRC Staff provide no basis for extending the State's contention deadline beyond January 14, 2013.<sup>4</sup> The Commission has long recognized that admissible contentions "must rest on the *license application*, not on NRC staff reviews."<sup>5</sup> In any event, Entergy's responses to the RAIs are due on September 12, 2012, and even if that date is slightly extended, New York will have plenty of time to formulate and articulate any contention by January 14, 2013.

*Finally*, the Board has been exceedingly generous in extending the time for New York to respond to Entergy's motion beyond even the 91 days New York had sought.<sup>6</sup> Nothing in New York's request justifies a longer period of time to file a contention on the same issue. By filing its contention simultaneously with its response to Entergy's Motion for Declaratory Order, New

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<sup>4</sup> Entergy disputes New York's speculation concerning the Staff's reasons for submitting the RAIs, as well as the State's underlying mischaracterization of the basis for Entergy's LRA Supplement. *See* Motion at 4.

<sup>5</sup> *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant), CLI 98-25, 48 NRC 325, 349-50 (1998) (rejecting a party's request to postpone the deadline for filing contention to allow party to examine NRC RAIs and applicant's responses) (emphasis in original); *see also Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 164 (2006) ("[W]e have held repeatedly that the mere issuance of a staff RAI does not establish grounds for a litigable contention."); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 337-39 (1999) ("[I]f we 'allow[ed] Petitioners to await completion of the RAI process before framing specific contentions, the hearing process frequently would take months or years even to begin, and expedited proceedings, such as the Commission contemplated for license renewal, would prove impossible.'").

<sup>6</sup> *See* "Order (Granting, in Part, the NRC Staff's and New York's Motion for Extension of Time)" (Aug. 8, 2012).

York would allow the Board to consider the same issue just once. In contrast, a later filing of the contention, after the Board has already considered the issues in the context of Entergy's motion, would be duplicative and serve no useful purpose.

For each of these reasons, Entergy respectfully urges the Board to deny New York's Motion for Extension of Time to the extent it seeks an extension beyond January 14, 2013.

Dated: August 28, 2012

Respectfully submitted,

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**ANSWER CERTIFICATION**

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.

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**CERTIFICATE OF SERVICE**

I certify that on August 28, 2012, copies of the foregoing Answer Opposing New York State's Motion for Extension of Time to File New Contentions were served electronically via the Electronic Information Exchange on the following recipients:

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