

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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))	
)	December 11, 2013

**JOINT MOTION FOR EXTENSION OF TIME
TO FILE PETITIONS FOR REVIEW OF LBP-13-13**

Pursuant to 10 C.F.R. §§ 2.323 and 2.307(a), Entergy Nuclear Operations, Inc. (“Entergy”), the State of New York (“New York”), Riverkeeper, Inc., (“Riverkeeper”), Hudson River Sloop Clearwater (“Clearwater” collectively, “Intervenors”), and the Nuclear Regulatory Commission (“NRC”) Staff hereby request that the Commission grant an extension of time, until February 14, 2014, in which to file petitions for review of the Atomic Safety and Licensing Board’s (“ASLB” or “Board”) recent Partial Initial Decision (“PID”) on the Track 1 Hearing Contentions (LBP-13-13).

I. BACKGROUND

Between October 15 and December 13, 2012, the Board conducted approximately two weeks of evidentiary hearings on nine admitted safety and environmental contentions. On November 27, 2013, the Board issued its PID concerning the nine Track 1 hearing contentions.¹ The Board’s PID is 390 pages in length and contains extensive references to the underlying evidentiary record, which, in its entirety, comprises several thousand pages of pre-filed written testimony (direct and rebuttal), almost 1500 admitted exhibits, more than 3,200 pages of hearing

¹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 75 NRC ___, slip op. (2013).

transcript, and more than 3,000 pages of proposed findings and associated replies.

II. LEGAL BACKGROUND

In accordance with 10 C.F.R. § 2.341(b)(1), petitions for review must be filed within 25 days after service of a full or partial initial decision by a presiding officer; *i.e.*, by December 23, 2013.²

10 C.F.R. § 2.307(a) states that the Commission may extend procedural deadlines for good cause, or by stipulation approved by the Commission or the presiding officer. The Commission has interpreted “good cause” under Section 2.307 to require a showing of “unavoidable and extreme circumstances.”³ It has further stated that “[t]he presiding officer will ultimately determine on a *case-by-case basis* whether a participant has demonstrated good cause for a § 2.307 request to extend a filing deadline.”⁴

III. ARGUMENT

The parties respectfully submit that good cause exists for the requested extensions. First, the Board’s decision was issued on the eve of a long holiday weekend, after holiday plans had been made by the parties, effectively erasing three to five days from the period in which petitions could be prepared. More importantly, as discussed below, the parties’ review of the Board’s PID and the preparation of petitions for review of that decision are expected to take significantly longer than is typical following the issuance of a decision in an NRC adjudicatory proceeding.

² See also *Indian Point*, LBP-13-13, slip op. at 389.

³ See *Balt. Gas and Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342-43 (1998) (holding that “construction of ‘good cause’ to require a showing of ‘unavoidable and extreme circumstances’ constitutes a reasonable means of avoiding undue delay in this important license renewal proceeding”); *Hydro Res., Inc.* (2929 Coors Road Suite 101, Albuquerque, NM 87210), CLI-99-1, 49 NRC 1, 3 n.2 (1999) (“We caution all parties in this case, however, to pay heed to the guidance in our policy statement that ordinarily only ‘unavoidable and extreme circumstances’ provide sufficient cause to extend filing deadlines.”); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

⁴ Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,572 (Aug. 3, 2012) (emphasis added).

Further, the parties have several other firm legal and regulatory obligations that will divert their attention in the intervening days, including the preparation of comments on the proposed waste confidence rule, due on December 20, 2013, the preparation of responses to New York's motion to reopen the record and for reconsideration on contention NYS-12C, due on December 17, 2013, and other pre-existing obligations.⁵

Most importantly, the parties seek an extension of this filing deadline due to the number of issues addressed by the Board's PID, and the voluminous nature of the PID and the evidentiary record which includes and relies upon numerous procedural, factual, and legal issues and decisions over the past six years. The parties anticipate that the process of reviewing the Board's decision on nine technical and environmental contentions against the evidentiary record by itself will require a substantial portion of the 25-day period provided in 10 C.F.R. § 2.341(a) for preparing and filing petitions for review. Furthermore, if they determine that appeals are warranted or appropriate, the parties may need to address numerous, complex legal and factual issues that will require careful research and analysis.

The scope of the Board's decision, ruling on the merits of nine contentions in a single 390-page decision, is an extraordinary and "extreme" circumstance as defined in 10 C.F.R. § 2.307.⁶ When the Commission extended the time for filing appeals from 15 to 25 days in its

⁵ See Proposed Rule; Extension of Comment Period; Waste Confidence--Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 66,858 (Nov. 7, 2013); State of New York Motion to Reopen the Record and for Reconsideration on Contention NYS-12C (Dec. 7, 2013), available at ADAMS Accession No. ML13343A213; 10 C.F.R. § 2.345(d) ("Within ten (10) days after a petition for reconsideration has been served, any other party may file an answer in opposition to or in support of the petition.").

⁶ In the past, Boards have typically held multiple evidentiary hearings over an extended period and issued bifurcated partial initial decisions on individual or smaller groups of contentions—such that any related appeals thereof were more compartmentalized in nature and occurred over a longer period of time. See, e.g., *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-03-4, 57 NRC 69 (2003); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-03-8, 57 NRC 293 (2003); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 NRC 454 (2003); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-05-21, 62 NRC 248 (2005); *Private Fuel Storage*

2012 revisions to 10 C.F.R. Part 2, it stated as follows:

Experience has demonstrated that the time [previously] allowed by the NRC's rules for petitions for review of a presiding officer's order (15 days) is unnecessarily short, and sometimes results in superficial appellate briefs. Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions.⁷

These considerations apply equally in this highly unusual case and justify the additional time sought by the parties for preparing petitions for review. That is, the requested extensions will facilitate the preparation of more thorough appellate briefs that will enhance the Commission's ability to render timely and well-informed decisions on appeal.

The parties recognize that this proceeding commenced approximately six years ago, and that the Commission prefers to avoid procedural delays.⁸ However, the instant extension request is reasonable under the circumstances, and will not cause hardship to any party or substantial delay in the proceeding. Importantly, the time extension is unlikely to affect the timing of final agency action on Entergy's license renewal application given the current schedule for other significant milestones in this proceeding. Those milestones include, for example, the Staff's publication of its second supplement to the Safety Evaluation Report ("SER") (expected in mid-2014), and the evidentiary hearings on four "Track 2" contentions, which have been deferred pending completion of the Staff second SER supplement.⁹

(Independent Spent Fuel Storage Installation), LBP-05-22, 62 NRC 328 (2005) (each resolving a major issue or subsets of issues in a separate decision).

⁷ Amendments to Adjudicatory Process, 77 Fed. Reg. at 46,575-76.

⁸ Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872, 41,873 (Aug. 5, 1998) ("Now, as then, the Commission's objectives are to provide a fair hearing process, to avoid unnecessary delays in the NRC's review and hearing processes.")

⁹ See NRC Staff's 22nd Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012, at 2-3 (Dec. 2, 2013), available at ADAMS Accession No. ML13336A860.

In addition, the Commission has suspended issuance of all licenses (including renewed licenses) dependent upon the NRC's waste confidence determination until the D.C. Circuit's June 2012 remand of the prior waste confidence rule has been appropriately addressed through the generic rulemaking process. Under the current schedule, the Commission will not issue a final rule on the continued storage of spent nuclear rule until September 2014.¹⁰

In accordance with 10 C.F.R. § 2.323(b), counsel for the Intervenors, Entergy and the NRC Staff have consulted and they all support this Motion. In consideration of the factors discussed above, the parties believe that an extension of time until February 14, 2014, is warranted and appropriate. Further, the parties request that, for the sake of efficiency and uniformity, a single date be established for the filing of all parties' petitions for review.

Finally, the parties wish to inform the Commission that, for the same reasons described above, the parties may at a later date seek an extension of the page limit provided in 10 C.F.R. § 2.341(b)(2), to allow their petitions to include additional pages beyond the maximum 25 page limit, depending on the number of issues to be appealed. Likewise, the parties may at a later date seek a commensurate extension of the page limit for answers to petitions for review, and of the time in which to prepare answers to other parties' petitions for review, depending on the number and complexity of those filings.

¹⁰ *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (2012). Following issuance of the Court of Appeals' decision, the Intervenors in this proceeding filed new contentions related to waste storage and/or disposal, to which the Applicant and Staff responded on August 2 and 3, 2012, respectively. On August 8, 2012, the Board ordered that all other pleadings concerning these contentions be held in abeyance pending further order.

IV. CONCLUSION

Accordingly, the parties respectfully request that all parties be afforded an extension of time, until February 14, 2014, in which to file petitions for review of the Board's Partial Initial Decision in LBP-13-13.

Respectfully submitted,

Signed (electronically) by Paul M. Bessette

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Executed in accord with 10 C.F.R. § 2.304(d)

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Dated at Washington, DC
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CERTIFICATION OF COUNSEL

In accordance with 10 C.F.R. § 2.323(b), counsel for Entergy certifies that he made a sincere effort to contact the other parties in this proceeding on December 9, 2013, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues to the extent practicable, and he certifies that his efforts have been successful.

Executed in accord with 10 C.F.R. § 2.304(d)

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