

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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In re:

Docket Nos. 50-247-LR; 50-286-LR

License Renewal Application Submitted by

ASLBP No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC,
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc.

DPR-26, DPR-64

December 30, 2013

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**UNOPPOSED MOTION BY STATE OF NEW YORK FOR EXTENSION OF TIME TO
FILE MOTION FOR LEAVE TO FILE REPLY ON MOTION TO REOPEN THE
RECORD AND FOR RECONSIDERATION OF CONTENTION NYS-12C**

Office of the Attorney General
for the State of New York
The Capitol
State Street
Albany, New York 12224

Pursuant to 10 C.F.R. § 2.323(a), the State of New York hereby requests an extension of time until January 8, 2014, to respond to (1) NRC Staff's Response to State of New York Motion to Reopen the Record and for Reconsideration of Contention NYS-12C, filed by the NRC Staff on Monday, December 23, 2013 at 4:14 pm, and (2) Entergy's Answer Opposing State of New York Motion to Reopen the Record and for Reconsideration of Contention NYS-12C, filed by Entergy on Monday, December 23, 2013 at 12:16 pm. As part of its opposition to the State's motion, NRC Staff filed an Affidavit of S. Tina Ghosh containing technical information not previously available to the State. Given the holidays and the technical nature of the information in the affidavit and responsive briefs, the State seeks additional time to review this affidavit and briefs with its experts, consult with other parties, and determine whether it is necessary to seek leave to file a rely. Counsel for Entergy, NRC Staff, Clearwater, and Riverkeeper have authorized New York State to state that they do not oppose the requested extension of time to file a motion for leave. Should the State decide that a motion for leave is necessary, it would engage in additional consultation on the substance of that motion.

APPROPRIATE CAUSE SUPPORTS THE REQUEST

NRC Staff and Entergy previously requested and received a six day extension for submittal of their opposition to the State's motion.¹ As a matter of courtesy, the State did not oppose that request. As a result of the extension, NRC Staff and Entergy filed their opposition to the State's motion on Monday, December 23, 2013. The Board's July 1, 2010 Scheduling Order states that

¹ See NRC Staff's Unopposed Motion for Extension of Time to Respond to "State of New York Motion to Reopen the Record and for Reconsideration on Contention NYS-12C" (Dec. 12, 2013); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), ASLB Order (Granting NRC Staff's Motion for an Extension of Time) (Dec. 13, 2013) (ML13347B281).

Although the agency's rules of practice regarding motions do not provide for reply pleadings, the Board will presume that for a reply to be timely it would have to be filed within seven (7) days of the date of service of the answer it is intended to address. See 10 C.F.R. § 2.309(h)(2).

ASLB Scheduling Order, n.22 (Jul. 1, 2010) (ML101820387). Thus, any reply by the State would be due today, Monday, December 30, 2013.

The July 2010 scheduling order also provides that a motion for leave to file a reply would have been due three (3) business days before the reply would be due and motions for extensions of time are due three (3) business days before the due date for the pleading or other submission for which an extension is sought. *Id.* at ¶¶G.3, G.4. Due to the holiday on December 25, 2013, there have been only three (3) business days between NRC Staff's filing on Monday, December 23, 2013 and the due date for a potential reply on Monday, December 30. Given holiday and the unavailability of various staff (discussed in more detail below), the State reviewed NRC Staff's papers on the evening of December 23 and on December 24 and 27. After further discussions, recognizing the need for more time, the State is submitting this request.

The State respectfully submits that appropriate cause supports the request to file its motion for leave on January 8, 2014:

1. Expert and Consultant Availability. The State's experts (International Safety Research, Inc., Ottawa, Canada) have had limited availability to review the Ghosh affidavit due to the holidays and the fact that their office is located in Canada and, thus, was closed on December 25 and 26, 2013.²

2. Content of Ghosh Affidavit. In its motion to reopen and for reconsideration, the State of New York requests that the Atomic Safety and Licensing Board reopen the hearing record on Contention NYS-12, consider the evidence presented by the State, and reconsider its

² December 26, Boxing Day is a holiday in Canada.

recent ruling in light of information that NRC Staff used a TIMDEC input value of 365 days in a MACCS2 analysis of a severe accident at a spent fuel pool. During consultation on the State's motion, NRC Staff stated that its use of a 365-day TIMDEC in the Spent Fuel Pool Consequence Study was not relevant because it came from a different study. Staff provided no further elaboration on its position, nor do any documents available to the State explain why Staff used a 365-day TIMDEC. The Ghosh affidavit for the first time attempts to set forth an explanation why a 365-day TIMDEC value was used, and attempts to distinguish the study of spent fuel pool severe accidents from the Indian Point Severe Accident Mitigation Alternatives ("SAMA") Analysis.

3. Potential Targeted Reply Addressing the Ghosh Affidavit and Statements. The State is considering filing a reply that focuses on the Ghosh Affidavit. To that end, the State hopes to work with its experts to review the information in the Ghosh affidavit, consult with other parties, and determine whether it is necessary to file a motion for leave to file a reply. The material in the Ghosh affidavit was not previously available to the State (or the public) and was not discussed during the consultation preceding the State's motion to reopen and reconsider.

4. Potential Targeted Reply Addressing Entergy Arguments. Entergy argues that the information was available since mid-2013 and that the State of New York should have disclosed the information. Entergy suggests that the State ran afoul of the Commission's disclosure obligation. The disclosure issue vis-à-vis the State was not discussed during consultation. Further, Entergy's argument seeks to conflate the information contained in the MACCS2 input and output files with a single line of text in the Spent Fuel Pool Consequence Study.

5. Attorney General Staff Availability. Given the holidays, key Attorney General staff have been and will be unavailable. AAG John Sipos, who consulted on and drafted the

motion to reopen and for reconsideration, is out of the office this week and will be returning on January 6, 2014. The office is closed on December 25, 2013 and January 1, 2014. Other Attorney General staff, including AAG Kathryn Liberatore, have been or will be unavailable at various points during these two weeks.

CONCLUSION

In light of the above, the State of New York respectfully submits that appropriate cause exists to justify the proposed extension and requests that the Board grant this motion to extend the filing date for the State's motion for leave to file a reply in support of New York's motion to reopen and reconsider until January 8, 2013.

Respectfully submitted,

Signed (electronically) by

John J. Sipos
Assistant Attorneys General
Office of the Attorney General
of the State of New York
The Capitol
Albany, New York 12224
(518) 402-2251

Signed (electronically) by

Kathryn M. Liberatore
Assistant Attorney General
Office of the Attorney General
for the State of New York
120 Broadway
New York, New York 10271
(212) 416-8482

Dated: December 30, 2013

10 C.F.R. § 2.323 Certification

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 Scheduling Order (at 8-9), I certify that I have made a sincere effort to contact counsel for the parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that NRC Staff, Entergy, Clearwater, Riverkeeper do not oppose the State's request for an extension of time until January 8, 2014 to file a motion for leave.