

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of )	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC. )	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3) )	
)	April 16, 2014

**PARTIES’ JOINT MOTION SEEKING TIME AND PAGE LIMIT ENLARGEMENTS  
FOR APPELLATE FILINGS RELATED TO CONTENTION NYS-12C**

Pursuant to 10 C.F.R. §§ 2.307(a), 2.323, and 2.346, Entergy Nuclear Operations, Inc. (“Entergy”), the State of New York (the “State”), and the Nuclear Regulatory Commission (“NRC” or “Commission”) Staff (collectively, the “parties”) hereby request that the Commission grant the page limit enlargements and extension of time proposed herein. These procedural requests relate to the parties’ forthcoming appellate filings concerning Contention NYS-12C, on which the Board ruled in its November 27, 2013, Partial Initial Decision (LBP-13-13).<sup>1</sup> As demonstrated below, good cause exists for the requested page limit and briefing schedule modifications.

**I. PROCEDURAL BACKGROUND**

On November 27, 2013, the Board issued its Partial Initial Decision, in which it resolved the nine “Track 1” safety and environmental contentions on the merits. In that decision, the Board resolved Contention NYS-12C in favor of Entergy and the NRC Staff.<sup>2</sup> On December 7, 2013, the State moved the Board to reopen the hearing record on Contention NYS-12C, consider new information presented by the State related to one of the input parameters challenged in NYS-12C,

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<sup>1</sup> See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), LBP-13-13, 78 NRC \_\_\_, slip op. (Nov. 27, 2013).

<sup>2</sup> See *id.* at 260-93.

and reconsider its merits decision on that contention in light of that new information.<sup>3</sup> On February 14, 2014, the State also filed a 60-page petition for Commission review of the Board's merits decision on NYS-12C in LBP-13-13.<sup>4</sup>

Subsequently, Entergy filed an unopposed motion requesting that the Commission hold in abeyance further briefing on the State's petition for review of LBP-13-13, as it pertains to Contention NYS-12C, until such time as the Board ruled on the State's pending motion to reopen and for reconsideration.<sup>5</sup> The Commission granted Entergy's motion by Order dated February 28, 2014, and stated therein that the time for answers and replies concerning the State's petition for review will run from the date of the Board's ruling.<sup>6</sup>

By Order dated April 1, 2014, the Board denied New York's motion to reopen the record and for reconsideration of the Board's merits decision on Contention NYS-12C.<sup>7</sup> Accordingly, pursuant to the Commission's February 28, 2014 Order and 10 C.F.R. § 2.341(b)(3), Entergy's and the NRC Staff's answers to the State's petition for review of the Board's decision on NYS-12C are due on April 28, 2014. The State's replies to Entergy's and the NRC Staff's answers, in turn, currently are due on May 8, 2014.

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<sup>3</sup> See State of New York Motion to Reopen the Record and For Reconsideration on Contention NYS-12C (Dec. 7, 2013), available at ADAMS Accession No. ML13341A002 (package).

<sup>4</sup> See State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 With Respect to Consolidated Contention NYS-12C (Feb. 14, 2014), available at ADAMS Accession No. ML14045A412 (package).

<sup>5</sup> See Applicant's Unopposed Motion to Hold Appellate Proceedings on Contention NYS-12C in Abeyance and Parties' Joint Motion Seeking Time and Page Limit Enlargements for Filings Related to Contentions NYS-8, NYS-35/36, and CW-EC-3A at 1-4 (Feb. 24, 2014), available at ADAMS Accession ML14055A534.

<sup>6</sup> See Commission Order at 1-2 (Feb. 28, 2014) (unpublished).

<sup>7</sup> See Licensing Board Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention) at 1-3 (Apr. 1, 2014) (unpublished). In its February 28, 2014 Order, the Commission directed the State to file a motion with the Commission within five business days of issuance of the Board's reconsideration ruling, in the event the State decided to amend or withdraw its petition for review as a result of the Board's ruling. See *id.* at 2. On April 4, 2014, the State informed the Commission and the parties in writing that the State will not seek to amend or withdraw its pending petition for review of the Board's merits decision on Contention NYS-12C as a result of the Board's April 1, 2014 Order denying reconsideration. See State of New York's Notice Pursuant to the Secretary's February 28, 2014 Order at 1 (Apr. 4, 2014), available at ADAMS Accession No. ML14094A330. However, the State indicated that it plans to file a separate petition for review of the Board's April 1, 2014 Order pursuant to 10 C.F.R. § 2.341. That petition is due on April 28, 2014. See *id.*

## II. LEGAL BACKGROUND

### A. Page Limit Enlargements

In accordance with 10 C.F.R. § 2.341(b)(3), answers to petitions for review may not exceed 25 pages, and replies to those answers may not exceed 5 pages. The Commission's page limit requirements are "intended to encourage parties to make their strongest arguments clearly and concisely, and to hold all parties to the same number of pages of argument."<sup>8</sup> However, the Commission has advised that, if parties do not believe the page limit specified in the regulations to be sufficient, then they should "file a motion to enlarge the number of pages permitted."<sup>9</sup> Requests for page limit enlargements must be supported by a showing of "good cause."<sup>10</sup>

### B. Extensions of Time

10 C.F.R. § 2.341(b)(3) states that answers to petitions for review must be filed within 25 days of service of a petition, and replies thereto must be filed within 10 days of service of any answer. Pursuant to 10 C.F.R. § 2.307(a), however, the Commission may extend procedural deadlines for good cause, or by stipulation approved by the Commission or presiding officer.

## III. ARGUMENT

### A. The Commission Should Enlarge the Page Limit for Entergy's and the NRC Staff's Answers to New York's Petition for Review of LBP-13-13

Entergy and the NRC Staff request that the Commission enlarge the page limit for their respective answers to the State's petition for review from 25 pages to 50 pages. Good cause exists for the requested page limit enlargement given the length (*i.e.*, 60 pages) of the State's February 14, 2014 petition for review; the number and complexity of the factual, technical, and legal issues

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<sup>8</sup> *Hydro Res., Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 46 (2001).

<sup>9</sup> *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 394 (2001); *see also Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), CLI-11-14, 74 NRC 801, 808 n.41 (2011) ("[W]e expect the parties to adhere to our page-limit requirements, or timely seek leave for an enlargement of the page limitation.").

<sup>10</sup> *See, e.g., Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 & 2), LBP-09-22, 70 NRC 640, 648 (2009).

under consideration; and the extensive nature of the evidentiary record on Contention NYS-12C.<sup>11</sup> Further, the requested enlargements are intended to facilitate the Commission's appellate deliberations on Contention NYS-12C by ensuring that the relevant issues are fully and adequately briefed by the parties.<sup>12</sup> The State does not oppose the requested page limit enlargement.

B. The Commission Should Enlarge the Page Limit for the State's Reply to Entergy's and the NRC Staff's Answers and Grant the State Additional Time to File the Reply

The State respectfully requests a short, two-week extension of time to file its reply to NRC Staff's and Entergy's answers to the State's petition for review of NYS-12C. To avoid duplication and streamline its filings, the State will file a combined reply to both the Staff's and Entergy's separate answers. In that regard, the State further requests that the Commission enlarge the applicable page limit in 10 C.F.R. § 2.341(b)(3) from 10 pages total (*i.e.*, five pages per reply) to 20 pages total, as the State will now file a single, combined reply to Entergy's and the Staff's answers. Such an enlargement is commensurate with the enlargement sought herein by Entergy and the Staff with respect to their answers (*i.e.*, from 25 to 50 pages). Accordingly, because Entergy's and the Staff's answers are due on April 28, 2014, the State's combined reply to those answers would now be due on May 22, 2014, and not exceed 20 pages in length.

There is good cause for the State's requests, which Entergy and the NRC Staff do not oppose. Counsel for the State will be unavailable on certain days during the current 10-day timeframe for its reply because of oral argument preparation on another matter as well as previously-scheduled medical appointments and other personal obligations. In addition to these scheduling issues, the State does not believe that 10 days is sufficient given the number and

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<sup>11</sup> The Commission previously granted the parties' joint request for an enlargement of the page limitation for petitions for review of LBP-13-13 by Order dated January 29, 2014. *See* Commission Order (Granting Motion for Enlargement of Page Limitation) at 1 (Jan. 29, 2014) (unpublished). The same considerations supporting good cause for that page limit enlargement also apply to the parties' instant page enlargement requests. *See* Joint Motion for Enlargement of Page Limitation for Petitions for Review at 2-4 (Jan. 23, 2014), *available at* ADAMS Accession No. ML14023A672.

<sup>12</sup> Again, the parties will endeavor to be as efficient and concise as possible in their filings and, as such, view the new page limits requested herein as upper-bound limits.

complexity of issues involved, as well as the length of NRC Staff's and Entergy's answers (up to 100 pages combined). The State also does not believe any party will be prejudiced by this extension. Lastly, the State filed its petition for review on February 14, 2014. Entergy and the NRC Staff thus will have had approximately 10 weeks (until April 28, 2014) to file their answers due to the Commission's February 28, 2014 Order holding in abeyance the State's petition for review pending issuance of the Board's ruling on the State's motion to reopen and for reconsideration.<sup>13</sup>

In accordance with 10 C.F.R. § 2.323(b), counsel for Entergy, the State, and the NRC Staff have consulted and they all support this Joint Motion. Counsel for the State and NRC Staff have authorized counsel for Entergy to file this Joint Motion on behalf of the parties.

#### IV. CONCLUSION

The parties respectfully request that the Commission (or the Secretary of the Commission acting pursuant to her authority under 10 C.F.R. § 2.346) approve the page limit enlargements and extension of time sought in this Joint Motion for good cause shown.

Respectfully submitted,

*Signed (electronically) by Paul M. Bessette*

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<sup>13</sup> As noted above, the Board ruled on the State's motion to reopen the record and for reconsideration on April 1, 2014, thereby terminating the abeyance imposed by the Commission's February 28, 2014 Order.

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Dated at Washington, DC  
this 16th day of April 2014

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

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the “Parties’ Joint Motion Seeking Time and Page Limit Enlargements for Appellate Filings Related to Contention NYS-12C” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

*Signed (electronically) by Lance A. Escher*

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