

**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, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. February 22, 2016
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**STATE OF NEW YORK
MOTION FOR LEAVE
CONTENTION NYS-40**

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NEW YORK STATE MOTION FOR LEAVE TO FILE NEW CONTENTION

A. Introduction

Pursuant to 10 C.F.R. § 2.309(f)(2) the State of New York seeks leave to file the attached Contentions NYS-40. The Contention is based on NRC Staff's December 2015 Draft Supplemental Environmental Impact Statement, NUREG-1437, Supplement 38, Volume 5, Draft Report for Comment (or DSEIS) (ML15351A422). In that document Staff accepts Entergy's engineering cost estimates as complete and identifies twelve cost-beneficial site-specific severe accident mitigation alternative modifications for Indian Point Unit 2 and Indian Point Unit 3. However, Staff's conclusion is that those cost-effective modifications do not need to be implemented as part of the license renewal process in this proceeding. As set out in Contention NYS-40, the State contends that Staff's conclusion is contrary to applicable law and the unique factual and procedural history of the Indian Point facilities.

The State of New York submits this contention to protect the State's interest in ensuring that the NRC includes, as part of this licensing proceeding, a complete, thorough, and meaningful review of site-specific severe accident mitigation alternatives to avoid or minimize the environmental impacts to the State and the New York metropolitan area resulting from a severe accident at Indian Point. The State also seeks to ensure that NRC includes cost-effective site-specific severe accident mitigation alternatives as conditions to any operating license and decision issued in this proceeding. That same month that NRC Staff issued the DSEIS, Indian Point Unit 3 entered its forty-first year of operation – or period of extended operation. As the Board and the parties are

aware, the NRC Commissioners currently are considering appeals by Entergy and NRC Staff from previous Board rulings concerning similar issues.¹ Accordingly, the State presents this contention to preserve and protect the State's interests in this proceeding.

The State has consulted with the parties about the current motion for leave. Riverkeeper and Clearwater support the State's motion. Entergy and Staff do not oppose the State's ability to file the motion for leave. They reserve the right to respond to the proposed contention after reviewing it.

This Board previously provided that the State could submit a contention based on Entergy's refined engineering cost estimates within 60 days after NRC Staff issued a draft EIS discussing Entergy NL-13-075. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3, Order (granting Entergy's Motion for Clarification) (July 9, 2013).

B. The Contention Meets The Requirements of 10 C.F.R. § 2.309(f)(2)

These contentions fully meet 10 C.F.R. § 2.309(f)(2) which requires for admissibility, in pertinent part, a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

Id.

1. Information Not Previously Available

¹ See, e.g., *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-3, 81 N.R.C. 217 (Feb. 18, 2015); LBP-11-17, 74 N.R.C. 11 (July 14, 2011); LBP-10-13, 71 N.R.C. 673 (June 30, 2010).

Contention NYS-40 is based upon Entergy's NL-13-075 and NRC Staff's discussion of the engineering cost estimates in its December 2015 Draft EIS. As such, the contention relies on information not previously available and thus meets the first prong of the test set forth in 10 C.F.R. § 2.309(f)(e)(i).

2. The New Information Is Materially Different Than Previously Available Information

It was not until Entergy and Staff completed their regulatory dialogue and communications regarding the engineering cost estimates and Staff completed its Draft EIS, that the State of New York was able to fully assess the position of those parties and determine that there would be no additional revision of engineering cost estimates.

3. The Contention is Timely

Pursuant to the Board's July 9, 2013 Order, contentions based on the NL-13-075 and the December 22, 2015 Draft SEIS were due to be filed on or before February 22, 2016. Contention NYS-40 is being filed on March 11, 2016.

Thus, the State of New York State has demonstrated that its four proposed new Contentions meet the requirements for admissibility set forth in 10 C.F.R. § 2.309(f)(2).

C. The Contention Also Meets the Requirements of 10 C.F.R. § 2.309(c)

Although a party is not required to demonstrate compliance with 10 C.F.R. § 2.309(c) where, as here it meets the requirements of 10 C.F.R. § 2.309(f)(2), NRC Staff has argued in other proceedings that a new contention is required to meet the provisions of both sections.² Since the State easily meets both sets of standards and, out of an

² 10 C.F.R. § 2.309(c) is only applicable to "late filed contentions". Contentions that meet the requirements of 10 C.F.R. § 2.309(f)(2) are, by meeting subpart iii, "timely" and thus do not need to meet the provisions of § 2.309(c). See *In the Matter of Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station) Docket No. 50-271-OLA, ASLBP No. 04-832-02-OLA (December 2, 2005) LBP-05-32 at 9-10.

abundance of caution, it provides the following demonstration of its compliance with the requirements of 10 C.F.R. § 2.309(c).

1. Good Cause

As set out in more detail in Contention NYS-40, this contention is being filed to protect the State's rights and interests ensuring a complete and meaningful review of SAMA issues in this licensing proceeding. Now that NRC Staff has accepted the engineering cost estimates as "complete." there is even less reason to defer and avoid implementing cost-effective site-specific SAMAs in this licensing proceeding.

2. The State of New York's Interest In This Proceeding, Its Standing And Its Unique Position As A Sovereign State Have Been Established

As an admitted party, the State of New York has already demonstrated that it has a right to be in the proceeding, that it has a substantial interest in the proceeding and that its interest will be substantially impacted by any order entered in this proceeding. See also 42 USC § 2021(e) (recognizing important role of States in AEA matters) Thus, it fulfills the provisions of 10 C.F.R. § 2.309(c)(ii, iii and iv). Similarly, no other party can adequately represent the interests of the State of New York, a sovereign governmental entity, particularly on the issues raised here, which issues have not been raised by any other party. Thus, the State also fulfills the provisions of 10 C.F.R. § 2.309(c)(v, and vi).

3. Admission of Contention NYS-40 Will Not Delay the Hearing And Will Assist in Developing the Record

Contention NYS-40 is essentially based on legal deficiencies in the December 2015 Draft EIS. The facts upon which the contention is based are taken directly from the December 2015 Draft EIS and the Staff's resolution of issues contained in NL-13-075. and does not necessarily depend upon expert testimony.

D. Conclusion

For the reasons stated, the State of New York urges the Board to grant it leave to file the attached contentions. NYS-40.

Respectfully submitted,

Signed (electronically) by _____

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February 22, 2016

Certificate Pursuant to 10 C.F.R. § 2.323

In accordance with the Board's Scheduling Order of July 1, 2010 (at 8-9) and 10 C.F.R. § 2.323(b), the undersigned counsel hereby certifies that counsel for the State of New York has made a sincere effort to contact the other parties in the proceeding and resolve the issues raised in the motion. Riverkeeper and Clearwater support the State's motion. Entergy and Staff do not oppose the ability of the State to file the motion for leave.

Signed (electronically) by

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