

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman  
Dr. Michael F. Kennedy  
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

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

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

July 22, 2016

ORDER

(Denying New York's Motion to Establish a Schedule for the  
Filing of a Waiver Petition and/or Contentions)

On June 30, 2016, the State of New York (New York or the State) filed a motion requesting that the Board enter a scheduling order setting deadlines for filing waiver petitions and/or new or revised contentions related to: (1) the site-specific environmental impacts of spent nuclear fuel accidents at Indian Point, stemming from the D.C. Circuit's recent decision in State of New York v. Nuclear Regulatory Commission,<sup>1</sup> and (2) potential alternatives and mitigation measures at Indian Point that could lessen or eliminate the impact of onsite accidents on the New York metropolitan area.<sup>2</sup> New York asserts that, although 10 C.F.R. § 2.335 does not

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<sup>1</sup> No. 14-1210, 2016 WL 3124946 (D.C. Cir. June 3, 2016) [hereinafter New York II]. On July 18, 2016, the State of New York, along with other petitioners, filed a Petition for Rehearing En Banc to the United States Court of Appeals for the District of Columbia. Letter from John J. Sipos, State of New York, to Lawrence G. McDade, Chairman, Dr. Michael F. Kennedy, and Dr. Richard Wardwell, Atomic Safety and Licensing Board (July 18, 2016).

<sup>2</sup> State of New York Motion to Establish a Schedule for Waiver and Contention Filings Concerning Site-Specific Review of Spent Fuel Storage Accidents and Mitigation Alternatives

contemplate a deadline for filing or responding to waiver petitions, setting a deadline would be beneficial because a “significant expenditure of resources and time would be consumed, including expert retention, for this effort.”<sup>3</sup> The State requests a minimum of 90 days from the issuance of the D.C. Circuit’s mandate for its decision in New York II or the resolution of any further litigation (whichever is later) to file waiver petitions and/or contentions.<sup>4</sup>

On July 11, 2016, the NRC Staff and Entergy filed answers to the Motion, urging the Board to deny New York’s request.<sup>5</sup>

For a variety of reasons, the Board denies New York’s Motion. First, the Board disagrees with New York that the effort involved to file waiver petitions and/or contentions is significantly burdensome. As New York itself noted, “[t]he State submitted extensive comments on both the draft GEIS [General Environmental Impact Statement] and the Proposed Continued Storage Rule.”<sup>6</sup> Expert testimony addressed the site-specific differences of Indian Point and the GEIS’ limitations.<sup>7</sup> Therefore, the vast majority of the work has already been completed.

Second, with the recent filing of a petition for rehearing en banc in New York II,<sup>8</sup> the Board is loathe to accept such an extended schedule and potential delay. As stated by Entergy,

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for the Indian Point Site and the New York City Metropolitan Area (June 30, 2016) [hereinafter Motion].

<sup>3</sup> Id. at 1.

<sup>4</sup> Id.

<sup>5</sup> NRC Staff’s Answer to New York’s Motion to Set a Schedule for the Filing of a Waiver Petition and/or Contentions Related to Spent-Fuel Storage at Indian Point (July 11, 2016); Entergy’s Answer to the State of New York’s Motion to Establish a Schedule for Waiver Petition and/or Contentions (July 11, 2016) [hereinafter Entergy Answer].

<sup>6</sup> Motion at 8.

<sup>7</sup> Id.

<sup>8</sup> See supra note 1.

it could be more than a year before New York's proposed trigger date for filing.<sup>9</sup> Furthermore, the actions of this Board and the Commission may well inform the Court's ultimate decision.

Finally, New York's proposed schedule is counter to the Board's previous ruling<sup>10</sup> and New York has not offered a compelling reason for why that ruling should be altered. As we stated then, "the Board will use a rule of reason" in considering waiver petitions.<sup>11</sup> "In determining whether such a petition has been timely filed, this Board will consider the nature of the request, the materiality of the issue that would be implicated by granting the waiver, the delay, if any, that would result if the petition was granted, and the time elapsed between when the petitioner learned of the matters that give rise to the request and when the petition is filed."<sup>12</sup>

For these reasons, the Board denies New York's Motion. Should the State wish to file a petition for waiver and new or revised contentions, it should do so as soon as possible. And if such a petition is filed, the Board will determine at that time whether it is timely.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 22, 2016

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<sup>9</sup> Entergy Answer at 2.

<sup>10</sup> Licensing Board Memorandum and Order (Scheduling Prehearing Conference and Ruling on New York State's Motion Requesting Consideration of Additional Matters) (Dec. 18, 2008) (unpublished).

<sup>11</sup> Id. at 4.

<sup>12</sup> Id.

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(Indian Point Nuclear Generating, )  
Units 2 and 3) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying New York's Motion to Establish a Schedule for the Filing of a Waiver Petition and/or Contentions)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell \_\_\_\_\_]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 22<sup>nd</sup> day of July, 2016