

July 9, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S UNOPPOSED REQUEST FOR AN EXTENSION OF TIME
TO RESPOND TO THE STATE OF NEW YORK'S MOTION
TO PRESERVE ALL NRC STAFF NOTES AND WORKING PAPERS
AND THE LICENSING BOARD'S RELATED ORDER OF JULY 3, 2008

Pursuant to 10 C.F.R. § 2.323(a), the NRC Staff ("Staff") hereby requests an extension of time, until July 21, 2008, to respond to the "Motion to Preserve All NRC Staff Notes and Working Papers Pursuant to 10 C.F.R. § 2.336(b)(3)" ("Motion") filed by the State of New York ("State") on June 30, 2008, and the Atomic Safety and Licensing Board's related "Order (Directing Briefing in Response to New York's Motion to Preserve Working Papers)" ("Briefing Order"), issued on July 3, 2008. In support of this request, the Staff states as follows:

1. On April 23, 2007, Entergy Nuclear Operations, Inc. ("Entergy" or Applicant") submitted its license renewal application ("LRA") for Indian Point Nuclear Generating Units 2 and 3 ("Indian Point"). On August 1, 2007, the NRC published a "Notice of Consideration" and "Notice of Opportunity for Hearing" concerning the LRA. 72 Fed. Reg. 42,134 (Aug. 1, 2007). The Notice stated that the Staff had found the Indian Point LRA to be acceptable for docketing, and it afforded members of the public an opportunity to request a hearing and to intervene in the NRC's consideration of the LRA. Timely requests for hearing were then submitted by the State and other persons.

2. After finding the LRA to be acceptable for docketing, the Staff commenced its review. As part of its review, during the period of August 2007 – February 2008 the Staff conducted a series of on-site audits related to the LRA.¹ Subsequently, at a public meeting held on June 18, 2008 concerning a separate NRC Region I inspection, a Staff member was asked a question regarding the Indian Point audit team’s document retention policy. In response, the Staff member stated her belief that the audit team followed the agency’s document retention policy in NRC Management Directive 3.53 (“NRC Records and Document Management Program”) rather than the Indian Point LRA audit team’s guidance document (“Audit and Review Plan for Plant Aging Management Reviews and Programs, Indian Point Nuclear Generating Station, Units 2 and 3”) (“IP Audit and Review Plan”).²

3. On June 30, 2008 the State filed its Motion, requesting that the Licensing Board issue an Order compelling the Staff to preserve “all Staff documentation that would have to be produced, or identified as privileged pursuant to 10 C.F.R. § 2.336(b), to any party in this proceeding.” Motion at 1. The State’s Motion generally describes and contrasts the guidance contained in NRC Management Directive 3.53 and in the Indian Point Audit and Review Plan. *Id.* at 3-4. Further, the Motion argues that an Order compelling the retention of documents is required to assure the preservation of all notes, “drafts,” “working papers,” and other documents prepared by Staff members during the Staff’s audit and review of the Indian Point LRA. *Id.* at 5, 6, 7.

¹ The Staff currently expects to issue an Audit Report and a Safety Evaluation Report (with open items) in late summer or early autumn 2008.

² The Staff expects to provide further information as to the actual document retention practices followed by the Indian Point audit team, in its response to State’s Motion and the Licensing Board’s Briefing Order.

4. On July 3, 2008, the Licensing Board issued its Briefing Order. Therein, the Board Chairman directed the Staff to retain "all documents now in existence that would potentially have to be produced, or identified as privileged pursuant to 10 C.F.R. § 2.336(b) . . . pending further Order from this Board."³ In addition, the Licensing Board directed the Staff to address five Board questions in its response to the State's Motion; these include two questions raising legal issues (Questions 3 and 4) and three questions of a factual nature, concerning the retention policy and the possible destruction or disposal of documents by the Staff's Indian Point audit team (Questions 1, 2 and 5).

5. Pursuant to 10 C.F.R. § 2.323(c) and the Licensing Board's Briefing Order, the Staff is required to respond to the State's Motion and the Board's Order (or request an extension of time to respond) by July 10, 2008. Briefing Order at 1. Counsel for the Staff has requested information from individual members of the Staff, whose input is necessary for the Staff to prepare its response to the State's Motion and the Board's Briefing Order. However, over a dozen individuals were involved in the Staff's audit of the Indian Point LRA -- some of whom have been or will be unavailable to respond immediately due to the July 4th holiday weekend and summer vacation schedules. Accordingly, the Staff believes it will require an additional period of time, until July 21, 2008, to prepare its response to the State's Motion and the Board's Briefing Order.

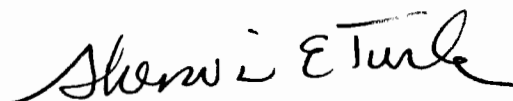
6. In accordance with 10 C.F.R. § 2.323(a), Staff Counsel has contacted Counsel for the State and Counsel for the Applicant. Counsel for the Applicant stated that he does not oppose this request. Counsel for the State indicated that the State does not oppose the Staff's request for an extension of time, on the condition that the State be granted an additional two

³ In accordance with the Licensing Board's Order, the Staff has directed its employees and consultants to retain any such documents, pending further Order by the Board.

days, until July 30, 2008, in which to file its reply to the Staff's response, due to time conflicts it faces during the week of July 21, 2008.⁴ The Staff does not oppose that request.

WHEREFORE, the Staff respectfully requests that it be afforded an extension of time, until July 21, 2008, in which to file its response to the State's Motion and the Board's Briefing Order.

Respectfully submitted,

A handwritten signature in black ink that reads "Sherwin E. Turk". The signature is written in a cursive style with a large, stylized 'S' and 'T'.

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 9th day of July 2008

⁴ See Briefing Order at 2, n.2 (providing a 7-day period for the filing of replies to the Staff's and Applicant's responses).

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In the Matter of)	
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(Indian Point Nuclear Generating)	
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CERTIFICATE OF SERVICE

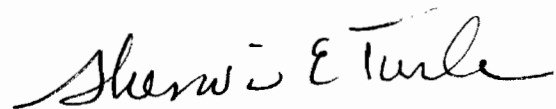
I hereby certify that copies of the foregoing "NRC STAFF'S UNOPPOSED REQUEST FOR AN EXTENSION OF TIME TO RESPOND TO THE STATE OF NEW YORK'S MOTION TO PRESERVE ALL NRC STAFF NOTES AND WORKING PAPERS AND THE LICENSING BOARD'S RELATED ORDER OF JULY 3, 2008", dated July 9, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 9th day of July, 2008:

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