

September 22, 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 RESPONSE TO THE STATE OF NEW YORK'S
"MOTION REQUESTING CONSIDERATION OF ADDITIONAL
MATTERS IN SCHEDULING AND CASE MANAGEMENT ORDER"

INTRODUCTION

On September 10, 2008, the State of New York ("State" or "New York") filed a motion requesting that the Atomic Safety and Licensing Board ("Licensing Board" or "Board") consider four "additional matters" in any Order regarding "scheduling and case management" in this proceeding.¹ In accordance with 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to the State's Motion. For the reasons more fully set forth below, the Staff submits that the State's Motion lacks any factual basis, is premature, burdensome and improper, and fails to establish that any need exists for the unprecedented and one-sided requirements it seeks to impose on the Staff and other parties in this proceeding. Accordingly, the Staff opposes the State's Motion and recommends that it be denied.²

¹ "Motion Requesting Consideration of Additional Matters in Scheduling and Case Management Order" ("Motion"), dated September 10, 2008.

² The Staff notes that a response in support of the State's Motion has been filed by Riverkeeper, Inc. ("Riverkeeper"). See "Riverkeeper, Inc.'s Response in Support of New York State Motion Requesting Consideration of Additional Matters," dated September 18, 2008.

BACKGROUND

This proceeding concerns the license renewal application (“LRA”) for Indian Point Nuclear Generating Units 2 and 3 (“Indian Point” or “IP”), submitted by Entergy Nuclear Operations, Inc. (“Entergy” or “Applicant”) on April 23, 2007. Petitions for leave to intervene and proposed contentions were filed by the State and other petitioners on or before December 10, 2007.³ On July 31, 2008, the Licensing Board issued LBP-08-13,⁴ in which the Board, *inter alia*, granted the petitions to intervene filed by the State, Riverkeeper, and Hudson River Sloop Clearwater (“Clearwater”), and admitted 15 of those parties’ contentions. See LBP-08-13, slip op. at 1, 225-27. In addition, the Board directed those parties to indicate, by August 21, 2008, whether they wished to proceed under Subpart G or Subpart L for each of their admitted contentions, and to explain why a particular Subpart is more appropriate for each contention. *Id.* at 227. The State and the other Intervenors filed their responses to the Board’s Order concerning the selection of Subpart G or Subpart L procedures on August 21, 2008, and responses to those filings were filed by Entergy and the Staff on September 15, 2008.

On September 10, 2008, prior to any ruling by the Board as to whether this proceeding (or discovery herein) will be conducted under Subpart L or Subpart G, the State filed the instant Motion – in which the State requested that the following four requirements now be imposed by the Board in this proceeding:

³ See, e.g., “New York State Notice of Intention to Participate and Petition to Intervene” (“State Petition”), dated November 30, 2007.

⁴ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC __ (“Memorandum and Order (Ruling on Petitions to Intervene and Requests for Hearing)” (July 31, 2008), slip op. at 227. See also, “Order (Denying CRORIP’s 10 C.F.R. § 2.335 Petition)” (July 31, 2008); and “Order (Striking WestCAN’s Request for Hearing)” (July 31, 2008).

(1) that a site visit to “Indian Point Units 1, 2, and 3 be scheduled at some reasonable time prior to the date for submission of prefiled direct testimony . . . to include parties’ counsel, staff, and experts, as necessary,” Motion at 3;

(2) that a conference be scheduled among the intervenors, Applicant, and Staff, “and/or with the participation of a representative of the Board or its staff,” regarding the production of electronically stored information, to include the timing of disclosures, the electronic and paper format, and accessibility to the proprietary documents and computer models owned and/or possessed by non-parties herein, *Id.* (capitalization omitted);

(3) that a deadline be established for the filing of waiver petitions under 10 C.F.R. § 2.335, *id.* at 5; and

(4) that the Staff be directed to provide “advance and timely notification to the State and other parties of meetings and communications” between Entergy and the Staff, *id.* at 5, to include advance notice of any meetings or telephone calls “sufficiently in advance to allow representatives of the State of New York or other parties or participants to attend the meeting or listen in on the phone conversation,” and that any communications between the Staff and Entergy, including E-mail messages, be transmitted “at the same time and in the same manner” to “the State’s counsel and all other parties and participants . . . in this proceeding.” *Id.* at 6.

As more fully set forth below, each of the State’s requests should be rejected as premature, unnecessary, burdensome and improper, and unsupported by any adequate basis at this time.

DISCUSSION

A. The State’s Request to Schedule a Site Visit.

In its Motion, the State requests that, when the Licensing Board issues its anticipated Order establishing hearing procedures, the Board should include a provision requiring that a

site visit to “Indian Point Units 1, 2, and 3 be scheduled at some reasonable time prior to the date for submission of prefiled direct testimony . . . to include parties’ counsel, staff, and experts, as necessary,” *id.* at 3. This request is premature and improper.

First, while the Staff believes that a site visit may be useful at some time in the future, a decision to conduct a site visit should be made by the Licensing Board based on its own determination that such a visit would assist it in adjudicating the contested issues in this proceeding. Further, any site visit should be scheduled for the purpose of enabling the Board, as the finder of fact in this proceeding, to tour the site and become familiar with any site characteristics relevant to the issues in the proceeding. Such a site visit should be scheduled only when the Board deems it to be necessary or appropriate for its resolution of the issues in this proceeding. Unless the Board determines that it wishes to visit the site now, the Staff suggests that any Order establishing the date for a site visit be deferred until it is clear which issues remain to be heard at an evidentiary hearing. At such time, a focused site tour may be conducted by the Board (with one or more of each parties’ representatives in attendance, limited to a reasonable number of persons).

Second, insofar as the State requests that a site visit be scheduled “at some reasonable time prior to the date for submission of prefiled direct testimony,” and that the parties’ expert witnesses be included in any such tour prior to the submission of their testimony, the State’s request appears to constitute an improper and indirect request for discovery. If the Licensing Board determines that this proceeding or portions thereof will be conducted as a Subpart G proceeding, the State could request such a site visit later, under the formal discovery rules set forth in 10 C.F.R. §§ 2.705 and 2.707(a)(2); any such request would be improper, however, if this proceeding is conducted under 10 C.F.R. Part 2, Subpart L. Further, as set forth above, the purpose for any site visit should be for the edification of the Board, not to educate the State

or its experts – and the timing of any such site visit should be established for the convenience of the Board. To the extent that the State seeks a site visit for its own or its experts' discovery purposes, its request should be rejected.

Third, the State's request improperly seeks to require a site visit to Indian Point Unit 1, a facility that is outside the scope of this license renewal proceeding. The State has failed to establish any need to tour Unit 1, and its request is improperly broad in the absence of any showing why a tour of Unit 1 is required by the Board and parties in this proceeding.

In sum, the State's request for issuance of an Order at this time, requiring the conduct of a site visit prior to the filing of testimony in this proceeding, to be attended by the parties' experts and to include a visit to Indian Point Unit 1, should be rejected.

B. The State's Request for A_Conference Among the Parties Regarding the Production of Electronically Stored Information.

As its second request, the State seeks to have the Board impose a requirement that the parties be directed to confer regarding the "production of electronically stored information (ESI)." Motion at 3. According to the State, "it would be helpful for the parties to participate in a conference, in advance of submitting any case management and scheduling proposals, among themselves and/or with the participation of a representative of the Board or its staff, to seek to find common ground and identify conflicts, to better focus these issues for Board consideration." *Id.* at 4. The State urges that any such conference address:

(1) the format and timing of disclosure of electronic documents, including whether those documents will be provided in a searchable format (via the application of Optical Character Recognition if applicable), whether documents will be produced in native format, .tif and text format, .pdf format, etc.;

(2) how parties will be given access to computer models, including MACCS2 and CHECWORKS, and specifically, how parties will access documents upon which a party in this proceeding relies, but which are in the possession of third parties,

over which the third party asserts proprietary status (*i.e.*, CHECWORKS);

(3) whether paper production will accompany production of ESI or whether hard copies will be scanned and produced electronically as well; [and]

(4) whether oversized documents such as diagrams, photographs, and/or maps will be produced in electronic format or in paper copy format.

Id. at 3-4.

The State's request should be rejected as premature and unwarranted at this time. No showing has been made that the Board needs to impose a conference requirement now, before the parties even know whether Subpart L or Subpart G discovery and hearing procedures are to be utilized in the proceeding, or which contentions might be subject to discovery under informal or formal procedures. Further, the parties have not yet made any of their mandatory disclosures in this proceeding, and there is no reason to conclude, at this time, that the parties' disclosures will be inadequate or that any such disclosures may need to be supplemented or produced in a format other than that which is initially made available, or that the parties will be unable to resolve any problems that may arise if a Board Order is not issued now. Thus, the Board should first determine whether this proceeding will be governed by Subpart L or Subpart G, and the parties should be permitted to make their initial disclosures as required. In the event that the State determines, following the commencement of mandatory disclosure discovery, that some party's disclosures are inadequate, the parties may then confer among themselves to resolve any perceived inadequacy;⁵ only if such a dispute arises which the parties are unable to resolve to their mutual satisfaction, should the Board be called upon to

⁵ Once the Board has issued its Order establishing whether Subpart L or Subpart G procedures are to be utilized in the proceeding, and the parties have had an opportunity to make their initial mandatory disclosures, the Staff would be willing to confer with the State and other parties on a voluntary basis, to discuss any procedural issues that may then exist and to help assure that all parties reach a mutually satisfactory resolution of any such issues.

resolve the matter. At this time, there is absolutely no basis for the State to request that the Board inject itself into a theoretical but as yet non-existent discovery dispute among the parties.

Further, no basis has been provided to support the State's *ipse dixit* assertion that "in this proceeding, a number of litigation filings submitted by NRC Staff and Entergy have not been in a text searchable format." *Id.* at 4 n.2. Contrary to the State's unsubstantiated representation, all of the Staff's "litigation filings" in this proceeding have been served upon the Board, the State and other parties in PDF or MS Word format; further, the Staff's "litigation filings" have been placed in the NRC's Agencywide Documents Access and Management System ("ADAMS") in searchable PDF format. The State's unsupported assertion to the contrary should be rejected.⁶

Moreover, the State's Motion lacks adequate support to the extent it alleges that the Staff or Entergy may not produce documents in a useable format in the future. In this regard, the State fails to present any basis whatsoever to support a claim that the Staff may not produce searchable documents in this proceeding in the future. Further, the State fails to present an adequate basis to support its attack on Entergy's future filings.⁷ The State's unsubstantiated claims should be rejected.

Finally, there is no basis for the State's assertion that without intervention of the Board, the State may not be able to access the CHECWORKS or MAACS2 computer codes or other

⁶ Similarly, the State has provided no basis for its attack on Entergy's "litigation filings" in this proceeding. Without specification by the State, its claims cannot reasonably be assessed; however, to the best of Staff Counsel's recollection, the Staff was able to conduct a text search of Entergy's litigation filings whenever it attempted to do so.

⁷ While the State represents that it "understands" that Entergy produced many "nontext-searchable documents" on CD Rom discs in the Vermont Yankee license renewal proceeding, which "impacted the ability of the New England Coalition to review the documents," Motion at 3-4 n.2, this assertion -- presumably based on hearsay information received from an unnamed source -- fails to provide any specific information upon which the Board may reasonably rely in finding that Entergy's conduct in that proceeding establishes a need to impose additional requirements here to assure that Entergy will produce documents in a proper format, or that the State of New York (using its own considerable electronic resources), will be unable to access Entergy's (or the Staff's) documents in the absence of such an Order.

proprietary documents in this proceeding. *Id.* at 3-4. In this regard, the State relies solely on its own “understand[ing]” of an intervenor’s experience in the Vermont Yankee license renewal proceeding, *id.*, nn. 3 & 4; noticeably, however, the State fails to apprise the Board that the intervenor in *Vermont Yankee* withdrew its request for access to the CHECWORKS code, after its expert and it decided not to agree to the entry of a protective order that would adequately protect the computer code’s owner (the Electric Power Research Institute (“EPRI”)) from the impermissible use of the code by the intervenor’s expert.⁸ Moreover, the State fails to provide any reason to believe that the CHECWORKS code or other proprietary documents or codes are necessary for litigation of its contentions here, or that any proprietary documents or codes would not be made available to the State here, under an appropriate non-disclosure agreement or protective order. Thus, the intervenor’s alleged experience in the *Vermont Yankee* proceeding provides no support for the State’s Motion here.

In sum, the State has failed to provide an adequate basis for its request that the Board direct the parties to conduct a discovery-related conference at this time. Any such conference should only be conducted after initial disclosures have been made by the parties, and only if and when an issue arises that requires them to confer; the Licensing Board should not be required to involve itself in the parties’ discovery efforts unless and until the need for such involvement appears necessary or appropriate.

⁸ See *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), Docket No. 50-271-LR, “New England Coalition, Inc.’s (NEC) Motion to Withdraw Motion to Compel and For Subpoena,” dated April 29, 2008 (stating, “[i]n light of “EPRI’s threats to ‘enforce its rights if NEC’s witness Dr. Joram Hopenfeld ‘unconsciously’ incorporates EPRI’s proprietary information into his work, Dr. Hopenfeld is no longer willing to review the CHECWORKS code”); see also, “EPRI’s Opposition to NEC’s Motion to Compel and For Subpoena,” dated April 21, 2008, at 3, 6-7.

C. The State's Request for A Deadline to Submit Waiver Petitions.

The State's third request asks the Board to impose a "deadline" for filing petitions for waiver of the Commission's rules under 10 C.F.R. § 2.335(b). Motion at 5. No showing whatsoever has been made to support this request, apart from the State's generalized assertions that imposition of such a deadline would "promote efficiency and clarity in this proceeding," would "add predictability" and avert "disrupti[ons] to the orderly resolution of the issues in this proceeding," *Id.* at 5, and that under 10 C.F.R. § 2.335, "no waiver petitions could have been filed prior to the Board's July 31, 2008 order." *Id.* at 5 n.4. These arguments are entirely without merit.

The Commission's regulations in 10 C.F.R. § 2.335(b) permit a petition for waiver of the Commission's regulations to be filed by "[a] party to an adjudicatory proceeding subject to [10 C.F.R. Part 2]." The rule, however -- like its predecessor, 10 C.F.R. § 2.758 (2004) -- does not prohibit the filing of a waiver petition by a petitioner for leave to intervene. The State's interpretation of the regulation, claiming that it could not have filed a waiver petition prior to its admission as a party in LBP-08-31, is baseless and is unsupported by any showing of legal precedent. Indeed, waiver petitions have been considered along with initial contentions in this proceeding,⁹ as well as in numerous other proceedings.¹⁰

Further, any request for a waiver of the Commission's regulations, like any motion filed in the proceeding, must be filed in a timely manner. To the extent that the State may have

⁹ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3) ("Order (Denying CRORIP's 10 C.F.R. § 2.335 Petition)"), dated July 31, 2008, at 3 (considering the merits of a petition for waiver, filed by a petitioner for leave to intervene (CRORIP)); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), 2007 NRC LEXIS 136 (Dec. 19, 2007) (NRC Secretary's Order accepting CRORIP's filing of a § 2.335 petition for waiver).

¹⁰ See, e.g., *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49, 86-87 (2002); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142; 238-42 (1998); *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-84-35, 20 NRC 887; 890-94 (1984).

wished to file a contention based on a waiver of the Commission's regulations, it could have done so in its original petition to intervene (as at least one other petitioner for leave to intervene did), so that its waiver request could and would have been considered by the Board in a timely manner. Any further contention that the State may wish to file, now or in the future, must be timely -- whether or not that contention is based on a petition for waiver.

Moreover, if the Board were to grant the State's request for the imposition of a deadline for filing waiver petitions, it would improperly preclude the filing of waiver petitions by other parties in the future -- for example, if an intervenor discovers new information which that party considers sufficient to support the filing of a late contention and petition for waiver. Further, if the Board were to accept the State's argument that "only a party" may seek a waiver of the Commission's regulations, the Board would, in essence, afford the State a second opportunity to file initial contentions in the proceeding -- ten months after the deadline established for such filing -- based on the State's self-serving argument that it could not have sought a waiver when it filed its original contentions on November 30, 2007. The State's request should be rejected for what it is -- an improper attempt to extend the time for filing initial contentions in this proceeding without regard to the timeliness of those contentions.

D. The State's Request for Advance and Timely Notification of Meetings and Telephone Calls, and for Copies of Written and Electronic Communications.

The State's final request is that the State and other parties be provided with "advance and timely notification . . . of meetings and communications between Entergy and [the] NRC Staff." Motion at 5 (capitalization omitted). Although seemingly non-controversial, this request totally disregards reality: In fact, proper advance notification of meetings concerning the license renewal application is provided by the Staff to the State and other parties, and the Staff routinely prepares and provides access to summaries of those meetings; similarly, written

communications between the Staff and Entergy are transmitted by the Staff to ADAMS, and will be identified or produced in the hearing file or as part of the Staff's mandatory disclosures.

Thus, despite the State's assertions that it may not be receiving timely advance notification of meetings between the Staff and Entergy, the fact is that advance public notice has been and will be provided by the Staff of meetings between the Staff and Entergy concerning the Indian Point license renewal application. To the extent that such meetings may occur, notice thereof would be provided by U.S. mail to all persons on the Staff's technical service list for the license renewal application – including several representatives for the State of New York¹¹ -- and advance notice of such meetings would also be placed on the NRC's external website (<http://www.nrc.gov/public-involve.html>).¹² There is absolutely no basis for the State's unfounded assertion that "the State does not learn of such meetings until weeks or months after they occur." Motion, at 5. By examining the NRC's external website, or opening the mail that is timely sent to its attorneys (Mr. Sipos and Ms. Matthews), the State will readily obtain advance notice of such meetings.

Further, there is no basis for the State's assertion that an Order is required to compel the Staff to transmit copies to Counsel for the State, of any communication between the Staff and Entergy concerning "various [unspecified] matters relating to this proceeding . . . whenever NRC Staff sends a written communication to Entergy about this matter." *Id.* at 6. In fact, the written correspondence concerning this license renewal application that is transmitted by the

¹¹ Copies of written communications from the Staff to Entergy are routinely transmitted to various persons on the Staff's technical service list, including New York attorneys John Sipos and Joan Leary Matthews (and three other New York State officials), and Riverkeeper representative Philip Musegaas.

¹² As indicated in the "Frequently Asked Questions" link on the website, the "NRC announces meetings no fewer than 10 calendar days before the meeting date. If a meeting must be scheduled but cannot be announced 10 calendar days in advance, the staff will provide as much advance notice as possible."

Staff to Entergy is copied to persons on the NRC's technical service list (including State Counsel Sipos and Matthews);¹³ further, written correspondence between Entergy and the Staff (including E-mail transmissions), regardless of which party originated the correspondence, would be placed by the Staff in the hearing file of this proceeding under 10 C.F.R. § 2.1203(b) or would be the subject of mandatory disclosures under 10 C.F.R. § 2.336.¹⁴ No showing has been made that these procedures are inadequate to provide sufficient notice and information to the State concerning those communications.

Further, no showing has been provided by the State in support of its request that the Board compel the Staff to modify its E-mail communications with the Applicant, to require the Staff to simultaneously transmit to the State's attorneys and all other parties' representatives, a copy of any E-mail transmissions and attached documents that the Staff may transmit to the Applicant. Motion at 6. This request improperly seeks to inject the Board into the Staff's performance of its independent review function; moreover, the State fails to show any reason to believe that the Commission's existing regulations – which require the Staff to include any such communications in the hearing file and/or to produce them in the Staff's mandatory disclosures – would fail to afford the State sufficient notice and information about those communications. Further, the State fails to show any reason why such a burdensome requirement should be imposed on the Staff, particularly in light of the fact that such E-mail communications have been and will be placed in ADAMS, and will be produced or identified in the hearing file and/or mandatory disclosures.

¹³ See, e.g., Letter from Kimberly Green (NRC) to Vice president, Operations (Entergy), dated May 12, 2008, Subject: Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, license Renewal Application – Structures," dated May 12, 2008 (Attachment 1 hereto).

¹⁴ To the extent that the State seeks to obtain copies of communications transmitted by Entergy to the Staff, in addition to being in ADAMS and the hearing file, any documents which relate to the State's contentions would also be produced or identified by Entergy under 10 C.F.R. § 2.336(a).

Similarly, to the extent that the Staff has telephone communications with Entergy concerning the Indian Point license renewal application, written summaries of any such telephone calls have been and will be prepared and placed in ADAMS and the hearing file under 10 C.F.R. § 2.1203, or would be the subject of mandatory disclosures under 10 C.F.R. § 2.336. The State fails to show any reason whatsoever to believe that these procedures – which are followed in all NRC adjudicatory proceedings – would fail to afford the State all the information required for it to litigate its contentions here.¹⁵

Moreover, the State's requests that the Board compel the Staff to provide advance notice to the State and other parties so that they may participate in the Staff's telephone communications, and that such parties be copied on all E-mail communications between the Staff and Entergy, improperly seeks to have the Board intrude in the Staff's independent review function. These requests would impose an unworkable and burdensome requirement on the Staff, and would improperly interfere with the Staff's performance of its independent review function. The State's extraordinary request would prohibit the Staff from being able to communicate spontaneously with the Applicant, if and when the Staff deems it necessary or appropriate to do so. No showing has been made as to why such an extraordinary and burdensome measure should be imposed, particularly since written summaries of the Staff's telephonic communications with the Applicant are routinely prepared and placed in the public record, as are any E-mail communications with the Applicant.¹⁶

¹⁵ See, e.g., "Summary of Telephone Conference Call Held on July 8, 2008, Between the [NRC] and [Entergy] Related to the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application – Reactor Vessel Neutron Embrittlement and Submerged Cables," dated July 25, 2008 (Attachment 2 hereto).

¹⁶ The State fails to provide any basis for its assertion that its status as a "sovereign state and an agreement state" warrants the grant of its Motion under any "special rights guaranteed under the Atomic Energy Act" Motion at 6, citing 42 U.S.C. § 2021(l).

CONCLUSION

The Commission's regulations establish binding requirements on the Staff, the Applicant and all other parties, to assure that they obtain all of the information needed to litigate contested issues in this license renewal proceeding. Such information will be provided by the parties under the Commission's mandatory disclosure requirements, the hearing file (under Subpart L), and other provisions affording public access to documents in the NRC's possession (including ADAMS and access to documents under 10 C.F.R. § 2.390). The State has failed to show that those procedures are inadequate to assure that the State receives all the information it requires to litigate its contentions in this proceeding, or that the Staff or Entergy will not comply with their disclosure and other obligations in this proceeding. Moreover, the State has failed to show that any of the measures proposed in its Motion should be adopted, and it has shown no reason to believe that the Licensing Board should grant the State's request for the imposition of extraordinary measures restricting the Staff's telephone and E-mail communications in this proceeding during the course of its independent review of the Indian Point license renewal application. The State's Motion is premature and altogether lacking in basis, and should be rejected.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of September 2008

Attachment 1

May 12, 2008

Vice President, Operations
Entergy Nuclear Operations, Inc.
Indian Point Energy Center
450 Broadway, GSB
P.O. Box 249
Buchanan, NY 10511-0249

SUBJECT: REQUEST FOR ADDITIONAL INFORMATION FOR THE REVIEW OF THE
INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3, LICENSE
RENEWAL APPLICATION – STRUCTURES

Dear Sir or Madam:

By letter dated April 23, 2007, as supplemented by letters dated May 3, 2007, and June 21, 2007, Entergy Nuclear Operations, Inc., submitted an application pursuant to Title 10 of the *Code of Federal Regulations* Part 54, to renew the operating licenses for Indian Point Nuclear Generating Unit Nos. 2 and 3, for review by the U.S. Nuclear Regulatory Commission (NRC or the staff). The staff is reviewing the information contained in the license renewal application and has identified, in the enclosure, areas where additional information is needed to complete the review. Further requests for additional information may be issued in the future.

Items in the enclosure were discussed with Mr. Robert Walpole, and a mutually agreeable date for the response is within 30 days from the date of this letter. If you have any questions, please contact me at 301-415-1627 or via e-mail at kimberly.green@nrc.gov.

Sincerely,

/RA/

Kimberly Green, Safety Project Manager
Projects Branch 2
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:
As stated

cc w/encl: See next page

May 12, 2008

Vice President, Operations
Entergy Nuclear Operations, Inc.
Indian Point Energy Center
450 Broadway, GSB
P.O. Box 249
Buchanan, NY 10511-0249

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Sincerely,
/RA/

Kimberly Green, Safety Project Manager
Projects Branch 2
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:
As stated

cc w/encl: See next page

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ADAMS Accession No.: **ML081230347**

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NAME	KGreen	YEdmonds	RFranovich (BPham for)
DATE	05/7/08	05/7/08	05/12/08

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Letter to Entergy from K. Green, dated May 12, 2008

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SUBJECT: REQUEST FOR ADDITIONAL INFORMATION FOR THE REVIEW OF THE
INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3, LICENSE
RENEWAL APPLICATION – STRUCTURES

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Units 2 and 3

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**INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3
LICENSE RENEWAL APPLICATION
REQUEST FOR ADDITIONAL INFORMATION (RAI)
STRUCTURES—CLARIFICATION ON RESPONSES**

Based on the staff's review of Entergy's responses dated February 27, 2008, and as discussed in a telephone conferences held on April 16, 2008, and April 28, 2008, please provide responses to the following:

RAI 2.4-1 (Follow Up)

With regard to Switchgear Structures and Foundation (IP3), clarify which structural components in Table 2.4-3 cover the switchgear structures and foundation. (Note that the structures listed in parentheses under line item "foundations" do not include switchgear structures).

RAI 2.4.1-2 (Follow Up)

- (i) The response states that the Primary Shield Wall is included as part of line item "Beams, columns, interior walls, slabs" in LRA Table 2.4-1. Note that walls with lesser safety-significance such as pressurizer shield, ring wall and cylinder walls have been listed as separate items in Table 2.4-1. Considering that the primary shield wall is subjected to a more severe environment (high temperature and radiation exposure) and has a much higher safety-significance than the general interior wall, it is prudent to include the primary shield wall as a separate line item in LRA Table 2.4-1 to make its inclusion as within the scope of license renewal and subject to AMR explicitly clear.
- (iii) The response states that the retaining wall is included as part of line item "Beams, columns, interior walls, slabs" in Table 2.4-1. The retaining wall at the equipment hatch entrance is an exterior wall and is subjected to a different environment than the interior wall. Therefore, the applicant should explicitly call out in the LRA Table 2.4-1 that the line item includes the retaining wall at the equipment hatch entrance or a separate table line item should be provided.
- (v) The response states that liner plate insulation is included with line item 'Insulation Jacket' in LRA Table 2.4-1. The materials for the insulation jacket and the insulation itself are not the same. The jacket is stainless steel but the insulation is polyvinyl chloride (PVC) for Unit 2, and Urethane foam covered with gypsum board for Unit 3 (See UFSAR Section 5.1). The insulation itself is not included in LRA Table 2.4-1 or Table 2.4-4, nor are these materials identified in LRA Sections 3.5.2.1.1 or 3.5.2.1.4. These items are also not addressed in the response to RAI 2.4.4-2. Clarify/address the scoping, screening and AMR of these in-scope insulation materials.
- (vi) The response states that protective coatings for the containment liner are not in scope because they do not perform an intended function. The staff believes that although protective coatings on the containment liner do not directly perform a license renewal function, they, however, prevent degradation of the liner if maintained. GALL AMP XI.S8 of NUREG-1801, Vol. 2 (the GALL Report), which is the AMP for protective coatings, recommends coating maintenance to avoid clogging of the sumps. The GALL Report states that if protective coatings are relied upon to manage the effects of aging, the structures monitoring program should include provisions to address protective coating

ENCLOSURE

July 25, 2008

LICENSEE: Entergy Nuclear Operations, Inc.
FACILITY: Indian Point Nuclear Generating Unit Nos. 2 and 3
SUBJECT: SUMMARY OF TELEPHONE CONFERENCE CALL HELD ON JULY 8, 2008,
BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION AND
ENTERGY NUCLEAR OPERATIONS, INC., RELATED TO THE INDIAN POINT
NUCLEAR GENERATING UNIT NOS. 2 AND 3, LICENSE RENEWAL
APPLICATION—REACTOR VESSEL NEUTRON EMBRITTLEMENT AND
SUBMERGED CABLES

The U.S. Nuclear Regulatory Commission (NRC or the staff) and representatives of Entergy Nuclear Operations Inc. (Entergy) held a telephone conference call on July 8, 2008, to obtain clarification on Entergy's recent responses to requests for additional information concerning the Indian Point Nuclear Generating Unit Nos. 2 and 3, license renewal application. The telephone conference call was useful in clarifying the applicant's responses.

Enclosure 1 provides a listing of the participants, and Enclosure 2 contains the items discussed with the applicant, including a brief description of their resolutions.

The applicant had an opportunity to comment on this summary.

IRA

Kimberly Green, Safety Project Manager
Projects Branch 2
Division of License Renewal
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:
As stated

cc w/encl: See next page

July 25, 2008

LICENSEE: Entergy Nuclear Operations, Inc.
FACILITY: Indian Point Nuclear Generating Unit Nos. 2 and 3
SUBJECT: SUMMARY OF TELEPHONE CONFERENCE CALL HELD ON JULY 8, 2008, BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION AND ENTERGY NUCLEAR OPERATIONS, INC., RELATED TO THE INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3, LICENSE RENEWAL APPLICATION—REACTOR VESSEL NEUTRON EMBRITTLEMENT AND SUBMERGED CABLES

The U.S. Nuclear Regulatory Commission (NRC or the staff) and representatives of Entergy Nuclear Operations Inc. (Entergy) held a telephone conference call on July 8, 2008, to obtain clarification on Entergy's recent responses to requests for additional information concerning the Indian Point Nuclear Generating Unit Nos. 2 and 3, license renewal application. . The telephone conference call was useful in clarifying the applicant's responses.

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IRA

Kimberly Green, Safety Project Manager
Projects Branch 2
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Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

Enclosure:
As stated

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NAME	SFiguroa	KGreen	RFranovich (ASTuyvenberg for)
DATE	07/24/08	07/25/08	07/25/08

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**TELEPHONE CONFERENCE CALL
INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3
LICENSE RENEWAL APPLICATION**

**LIST OF PARTICIPANTS
JULY 8, 2008**

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Roy Mathew	NRC
Mike Stroud	Entergy Nuclear Operations, Inc. (Entergy)
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Ted Ivy	Entergy
Roger Rucker	Entergy
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Floyd Gumble	Entergy
Nelson Azevedo	Entergy
Herb Robinson	Entergy

**INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3
LICENSE RENEWAL APPLICATION
REACTOR VESSEL NEUTRON EMBRITTLEMENT AND
INACCESSIBLE OR UNDERGROUND POWER CABLES
JULY 8, and 11, 2008**

RAI 4.2.2-2

By letter dated November 28, 2007, Entergy responded to the staff's request regarding Charpy upper shelf energy (USE) analyses for Indian Point Nuclear Generating Unit No. 2 (IP2). The RAI contained two parts. During a telephone conference on May 7, 2008, the staff asked the applicant to provide the same information for Indian Point Nuclear Generating Unit No. 3 (IP3). By letter dated June 11, 2008, Entergy provided the requested information for IP3, but only for part (b) of the original request. During the telephone conference call on July 8, the staff asked the applicant to confirm whether the information previously supplied for IP2 for part (a) of the request applied to IP3. Entergy stated that the reactor vessel beltline plate material for IP3 is the same as the material for IP2. In a subsequent call, on July 11, 2008, the applicant confirmed that the WCAP report referenced in the November 28, 2007, response only cites IP2, but the materials in both vessels are the same and meet the same ASME code case and Combustion Engineering specification; therefore, the analyses would apply to IP3. The staff's evaluation will be documented in the safety evaluation report.

RAI 3.6.2.3-2

By letter dated May 28, 2008, the staff requested information regarding a 138kV direct burial insulated transmission cable that is submerged. By letter, dated June 26, 2008, the applicant responded to the RAI. After staff reviewed the response, they determined they needed additional information regarding the qualification and testing of the cable as well as operating experience. The staff stated that there is operating experience in licensee event reports regarding to the failure of cables. Entergy stated that it was not aware of any operating experience related to lead sheathed cables. The staff stated that it would provide examples of failures to the applicant. Entergy stated that it would talk to the owner of the cable and the vendor to see if additional information is available regarding the qualification and testing. Entergy emphasized that the cable of interest is nonsafety-related and not designed to meet the single failure criterion. Further, there is a statement in GALL XI.E.3 that provides an exclusion regarding environments for which the cables are designed. The resolution of this issue will be documented in the staff's safety evaluation report.

Letter to Entergy Nuclear Operations, Inc. from KGreen, dated July 25, 2008

DISTRIBUTION:

SUBJECT: SUMMARY OF TELEPHONE CONFERENCE CALL HELD ON JULY 8, 2008, BETWEEN THE U.S. NUCLEAR REGULATORY COMMISSION AND ENTERGY NUCLEAR OPERATIONS, INC., RELATED TO THE INDIAN POINT NUCLEAR GENERATING UNIT NOS. 2 AND 3, LICENSE RENEWAL APPLICATION—REACTOR VESSEL NEUTRON EMBRITTLEMENT AND SUBMERGED CABLES

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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))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO THE STATE OF NEW YORK'S 'MOTION REQUESTING CONSIDERATION OF ADDITIONAL MATTERS IN SCHEDULING AND CASE MANAGEMENT ORDER'", dated September 22, 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 22nd day of September, 2008:

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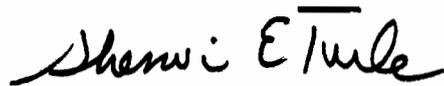
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