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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
ENERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	August 28, 2009

**REPLY OF ENERGENCY NUCLEAR OPERATIONS, INC. TO
NRC STAFF'S ANSWER TO JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER**

In accordance with the direction of the Atomic Safety and Licensing Board ("Board") during the August 24, 2009 Prehearing Conference, Entergy Nuclear Operations, Inc. ("Entergy") hereby responds to the U.S. Nuclear Regulatory Commission ("NRC") Staff's "Answer to Joint Motion for Entry of a Protective Order" ("Answer"), filed on August 24, 2009. The NRC Staff supports entry of a Protective Order, but opposes certain provision of the proposed Protective Order. Entergy herein provides the following comments and clarifications regarding the NRC Staff's suggested modifications to the proposed Protective Order.

First, Entergy acknowledges that the Trade Secrets Act, 18 U.S.C. § 1905, and NRC regulations prohibit unauthorized disclosure of proprietary information by the NRC Staff and, therefore, Entergy does not oppose modifying the Protective Order to remove the requirement that the NRC Staff execute nondisclosure agreements.

Second, with respect to the NRC Staff's requested reference to a "privilege log" in Paragraph A of the Protective Order,¹ Entergy notes that the parties have agreed to waive the requirement for producing privilege logs.² Thus, inasmuch as the parties are only required to produce proprietary

¹ Answer at 7; Attachment at 2.

² See Letter from K. Sutton, Counsel for Entergy, to Licensing Board, at 2 (Jan. 13, 2008).

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document logs (as opposed to privilege logs), Entergy suggests that the word “proprietary log” be substituted for “privilege log” in Paragraph A of the modified Protective Order.

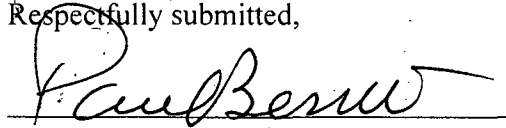
Third, the NRC Staff indicates that it withdraws its objection regarding the absence of a “need to know” provision in the Protective Order.³ As the NRC Staff correctly notes, that provision was originally included in an earlier draft of the Protective Order. Entergy wishes to note its understanding that removal of the need to know provision does not alter any of the parties’ mandatory disclosure obligations under 10 C.F.R. § 2.336, as parties are only required to disclose and produce documents, including proprietary documents, relevant to a party’s admitted contentions. Thus, a party is under no obligation to disclose a proprietary document to another party if that document is not relevant to that party’s admitted contentions, regardless of whether that party has signed a nondisclosure agreement. With this understanding, and given the potential administrative burden of complying with a “need to know” requirement,⁴ Entergy agreed to the intervenors’ suggestion that the “need to know” provision be removed.

In summary, subject to the comments and clarifications noted above, Entergy does not oppose the NRC Staff’s proposed modifications to the Protective Order.

³ Answer at 6 n.3.

⁴ Specifically, the parties were concerned that the need to know provision could necessitate the filing of multiple versions of a single pleading referencing proprietary information, depending on whether the receiving party had a need to know the proprietary information in that filing.

Respectfully submitted,



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Dated in Washington, D.C.
this 28th day of August 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	
)	
(Indian Point Nuclear Generating Units 2 and 3))	
)	August 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Reply of Entergy Nuclear Operations, Inc. to NRC Staff's Answer to Joint Motion for Entry of Protective Order," dated August 28, 2009, were served this 28th day of August, 2009 upon the persons listed below, by first class mail and by e-mail as shown below.

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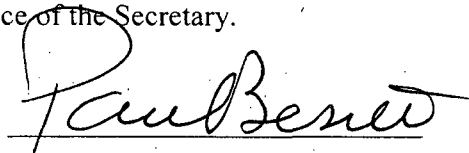
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