

January 27, 2010

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-LR/ 50-286-LR  
 )  
(Indian Point Nuclear Generating )  
Units 2 and 3) )

NRC STAFF'S ANSWER TO STATE OF NEW YORK'S MOTION TO  
COMPEL NRC STAFF TO PRODUCE THE MACCS2 CODE ABSENT A FEE,  
AND MOTION FOR DISMISSAL OF THAT MOTION AS MOOT

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the U.S. Nuclear Regulatory Commission ("NRC Staff") hereby files its answer to the "Motion To Compel NRC Staff to Produce the MACCS2 Code Absent a Fee in Compliance with the National Environmental Policy Act and NRC Disclosure Regulations" ("Motion to Compel") filed by the State of New York ("New York" or "State") on January 15, 2010.<sup>1</sup>

In its Motion to Compel, the State requested that the Staff be directed to produce to the State a copy of the "MELCOR Accident Consequence Code System" ("MACCS2") computer code which Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") had used in its Severe Accident Mitigation Alternatives ("SAMA") analysis for the Indian Point Nuclear Generating

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<sup>1</sup> This Answer is filed pursuant to an extension of time which the Atomic Safety and Licensing Board ("Board") afforded the Staff by Order of January 26, 2010.

Units 2 and 3 ("Indian Point") license renewal application ("LRA"),<sup>2</sup> without requiring the State to pay a fee for the code. See Motion at 11-15.<sup>3</sup>

Counsel for the Staff wishes to inform the Board that the NRC Staff and State of New York have now reached an agreement, whereby the Staff will provide to the State a CD containing the MACCS2 code used by Entergy in its SAMA analysis for the Indian Point LRA (MACCS2 v. 1.13.1), along with the MACCS2 user manual which explains how to use the code. In this regard, no fee will be charged by the Staff, and the State's use of the code will be governed by the non-disclosure agreement that was previously executed by the State. Based on the Staff's agreement to provide the MACCS2 code to the State without requiring payment of a fee, the State has agreed that its motion to compel the Staff to produce the code absent payment of a fee is moot. Accordingly, Counsel for the State has authorized the Staff to represent herein that the State agrees and stipulates that the Board may dismiss its Motion to Compel as moot.

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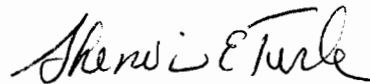
<sup>2</sup> Entergy's LRA included an Environmental Report ("ER"), in which Entergy presented its SAMA analysis. ER § 4.21, at 4-47 – 4-78. As indicated therein, Entergy's SAMA analysis included a Probabilistic Safety Assessment model that utilized the MACCS2 computer code to convert release input to public dose and offsite property damage. *Id.* at 4-48.

<sup>3</sup> As described by the State, "MACCS2 is a document that was used by Entergy in preparing its [ER], and was used by NRC Staff as part of its review of the ER (DSEIS, Vol. 2, Appendix G at G-1), thus it 'provides support for' the proposed action, and 'support[s] the NRC staff's review' of the application." Motion at 12; footnote omitted. As further stated by Mr. Sipos, Counsel for the State, in a letter to the Board dated January 7, 2009, "New York wishes to obtain the [MAACS2] code and the site specific inputs used by NRC and Entergy for the license renewal applications for the Indian Point reactors." *Cf.* Tr. 787 (New York seeks the MACCS2 code so it "can observe the inputs, observe the runs and the results of the runs, and work with that code.").

CONCLUSION

For the foregoing reasons, the Staff respectfully submits that New York's Motion to Compel should now be dismissed as moot.

Respectfully submitted,

A handwritten signature in black ink that reads "Sherwin E. Turk". The signature is written in a cursive style with a large, prominent "S" and "T".

Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 27<sup>th</sup> day of January 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO STATE OF NEW YORK'S MOTION TO COMPEL NRC STAFF TO PRODUCE THE MACCS2 CODE ABSENT A FEE, AND MOTION FOR DISMISSAL OF THAT MOTION AS MOOT" dated January 27, 2010, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, or, as indicated by an asterisk, by deposit in the U.S. Postal Service, with copies by electronic mail this 27<sup>th</sup> day of January, 2010:

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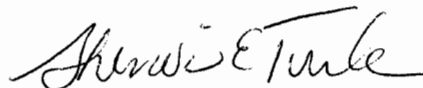
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