

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-0247-LR and 50-286-LR

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

January 28, 2010

ORDER

(Dismissing New York's Motion to Compel Discovery as Moot)

On January 15, 2010, the State of New York (New York) filed a motion to compel, free of charge, disclosure of NRC Staff's MACCS2 computer codes.¹ On January 27, 2010, the NRC Staff filed a motion to dismiss New York's motion as moot, on the grounds

[T]hat the NRC Staff and State of New York have now reached an agreement, whereby the Staff will provide to the State a CD containing 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.²

This agreement between the parties entails no fee to be charged by the NRC Staff to New York, while New York's "use of the code will be governed by the non-disclosure agreement that was previously executed by" New York.³ Accordingly, NRC Staff represents that New York has

¹ Motion to Compel NRC Staff to Produce the MACCS2 Codes Absent a Fee in Compliance with the National Environmental Policy Act and NRC Disclosure Regulations (Jan. 15, 2010).

² 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 (Jan. 27, 2010) at 2.

³ Id.

agreed that its motion to compel disclosure of the code is now moot and that the motion should be dismissed.⁴

Since the parties have responsibly resolved this dispute regarding disclosure amongst themselves, the Board hereby dismisses New York's Motion to Compel as moot.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
January 28, 2010

⁴ Id.

⁵ Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (3) Counsel for the State of New York; (4) Counsel for Riverkeeper, Inc.; (5) Manna Jo Green, the Representative for Clearwater; (6) Counsel for the State of Connecticut; (7) Counsel for Westchester County; (8) Counsel for the Town of Cortlandt; (9) Mayor Alfred J. Donahue, the Representative for the Village of Buchanan; and (10) Counsel for the New York City Economic Development Corporation.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (DISMISSING NEW YORK'S MOTION TO COMPEL DISCOVERY AS MOOT) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Sherwin E. Turk, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian Harris, Esq.
Andrea Z. Jones, Esq.
Karl Farrar, Esq.
Brian Newell, Paralegal

Administrative Judge
Lawrence G. McDade, Chair

Administrative Judge
Richard E. Wardwell

Administrative Judge
Kaye D. Lathrop
190 Cedar Lane E.
Ridgway, CO 81432

Zachary S. Kahn, Law Clerk
Joshua A. Kirstein, Law Clerk

Docket Nos. 50-247-LR and 50-286-LR
 ORDER (DISMISSING NEW YORK'S MOTION TO COMPEL DISCOVERY AS MOOT)

William C. Dennis, Esq.
 Assistant General Counsel
 Entergy Nuclear Operations, Inc.
 440 Hamilton Avenue
 White Plains, NY 10601

Andrew M. Cuomo, Attorney General
 John J. Sipos, Assistant Attorney General
 Mylan L. Denerstein
 Deputy Assistant Attorney General
 Division of Social Justice
 Janice A. Dean
 Assistant Attorney General
 Office of the Attorney General
 of the State of New York
 The Capitol
 State Street
 Albany, New York 12224

Kathryn M. Sutton, Esq.
 Paul M. Bessette, Esq.
 Martin J. O'Neill, Esq.
 Mauri T. Lemoncelli, Esq.
 Counsel for Entergy Nuclear Operation, Inc.
 Morgan, Lewis & Bockius, LLP
 1111 Pennsylvania Avenue, NW
 Washington, DC 20004

Joan Leary Matthews, Esq.
 Senior Attorney for Special Projects
 New York State Department
 of Environmental Conservation
 625 Broadway, 14th Floor
 Albany, New York 12233-5500

Michael J. Delaney
 Vice President, Energy Department
 New York City Economic Development
 Corporation (NYCEDC)
 110 William Street
 New York, NY 10038

Robert D. Snook, Esq.
 Office of The Attorney General
 State of Connecticut
 55 Elm Street
 P.O. Box 120
 Hartford, CT 06141-0120

Arthur J. Kremer, Chairman
 New York Affordable Reliable Electricity
 Alliance (AREA)
 347 Fifth Avenue, Suite 508
 New York, NY 10016

Stephen C. Filler, Board Member
 Hudson River Sloop Clearwater, Inc.
 303 South Broadway, Suite 222
 Tarrytown, NY 10591

Docket Nos. 50-247-LR and 50-286-LR
 ORDER (DISMISSING NEW YORK'S MOTION TO COMPEL DISCOVERY AS MOOT)

Daniel E O'Neill, Mayor
 James Siermarco, M.S.
 Liaison to Indian Point
 Village of Buchanan
 Municipal Building
 236 Tate Avenue
 Buchanan, NY 10511-1298

Manna Jo Greene, Environmental Director
 Hudson River Sloop Clearwater
 112 Little Markey Street
 Poughkeepsie, NY 12601

Thomas F. Wood, Esq.
 Town of Cortlandt
 Daniel Riesel, Esq.
 Jessica Steinberg, J.D.
 Counsel for the Town of Cortlandt
 Sive, Paget & Riesel, P.C.
 460 Park Avenue
 New York, NY 10022

Nancy Burton, Esq.
 Connecticut Residents Opposed
 to Relicensing of Indian Point (CRORIP)
 147 Cross Highway
 Redding Ridge, CT 06876

Elise N. Zoli, Esq.
 Goodwin Proctor, LLP
 Exchange Place
 53 State Street
 Boston, MA 02109

Justin D. Pruyne
 Assistant County Attorney, Litigation Bureau
 Of Counsel to Charlene M. Indelicato, Esq.
 Westchester County Attorney
 148 Martine Avenue, 6th Floor
 White Plains, NY 10601

FUSE USA
 John LeKay
 Heather Ellsworth Burns-DeMelo
 Remy Chevalier
 Bill Thomas
 Belinda J. Jaques
 351 Dyckman Street
 Peekskill, New York 10566

Westchester Citizens' Awareness Network
 (WestCan), Citizens Awareness Network,
 (CAN), et al
 Susan H. Shapiro, Esq.
 21 Pearlman Drive
 Spring Valley, NY 10977

Philip Musegaas, Esq.
 Deborah Brancato, Esq.
 Riverkeeper, Inc.
 828 South Broadway
 Tarrytown, NY 10591

Richard L. Brodsky
 Assemblyman
 5 West Main Street
 Suite 205
 Elmsford, NY 10523

Docket Nos. 50-247-LR and 50-286-LR
ORDER (DISMISSING NEW YORK'S MOTION TO COMPEL DISCOVERY AS MOOT)

Sarah L. Wagner, Esq.
Legislative Office Building, Room 422
Albany, NY 12248

[Original signed by Christine Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of January 2010