RASE-446

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In re:	Docket Nos. 50-247-LR; 50-286-LR
License Renewal Application Submitted by	ASLBP No. 07-858-03-LR-BD01
Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc.	DPR-26, DPR-64 February 3, 2011

RESPONSE OF ATTORNEY GENERAL OF CONNECTICUT IN SUPPORT OF NEW YORK'S MOTION FOR SUMMAY DISPOSITION OF CONSOLIDATED CONTENTION NYS-35/36

The State of Connecticut, an interested governmental party in this proceeding, files this response in support of the State of New York's Motion for Summary Disposition of Consolidated Contention NYS-35/36.

The Attorney General of Connecticut has previously filed several pleadings before the Atomic Safety and Licensing Board ("ASLB") as part of its review of Entergy Nuclear Operations, Inc.'s application for renewal of its license to operate the Indian Point nuclear power station for an additional 20 years. The State of Connecticut fully supports the positions taken by the State of New York, particularly that the Final Supplemental Environmental Impact Statement ("FSEIS") released in December, 2010, does not meet the requirements of the National Environmental Policy Act and that Entergy and NRC Staff's severe accident mitigation alternatives analysis is deficient.

Specifically, The National Environmental Policy Act, 42 U.S.C § 4321, *et seq.* ("NEPA"), mandates that federal agencies involved in activities that may have a significant

impact on the environment complete a detailed statement of the environmental impacts and project alternatives. "NEPA was created to ensure that agencies will base decisions on detailed information regarding significant environmental impacts and that information will be available to a wide variety of concerned public and private actors. *Morongo Band of Mission Indians v. Federal Aviation Administration,* 161 F.3d 569, 575 (9th Cir. 1998)" (quoted in *Mississippi River Basin Alliance v. Westphal,* 230 F.3d 170, 175 (5th Cir. 2000)).

The fundamental goal of an evaluation under NEPA is to require responsible government agencies involved with a given project to undertake a careful and thorough analysis of the need for that project and its impacts before committing to proceed with the project. As the Tenth Circuit has held:

> The purpose of NEPA is to require agencies to consider environmentally significant aspects of a proposed action, and, in so doing, let the public know that the agency's decisionmaking process includes environmental concerns. *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council,* 462 U.S. 87, 97, 76 L. Ed. 2d 437, 103 S. Ct. 2246 (1983); *Sierra Club v. United States Dep't of Energy*, 287 F.3d 1256, 1262 (10th Cir. 2002).

Utahns For Better Transportation v. United States Dept. of Transp., 305 F.3d 1152, 1162 (10th Cir. 2002). NRC's NEPA regulations require the FSEIS to include "consideration of major points of view concerning the environmental impacts of the proposed action and the alternatives, and contain an analysis of significant problems and objections raised by other Federal, State, and local agencies, by any affected Indian tribes, and by other interested persons" (10 C.F.R. § 51.71(b)), and discuss and respond to any relevant responsible opposing view not adequately discussed in the DSEIS. 10 C.F.R. § 51.91 (3)(b).

As required by NEPA and NRC regulations 10 C.F.R. § 51.53 (c)(3)(ii)(L), NRC Staff is required to examine site-specific severe accident mitigation alternatives ("SAMAs"). The SAMA analysis for Indian Point indicates that there are at least 22 mitigation alternatives that appear to be cost-effective and beneficial. These measures would mitigate the environmental impacts in Connecticut that could come about from a severe reactor accident at either of the two Indian Point reactors. As explained by New York in its motion, the reasons given by the FSEIS for not requiring the implementation of the cost effective mitigation measures do not withstand scrutiny under NRC precedent and regulations. Accordingly, the Board should grant New York's motion.

These identified measures could have a significant mitigative impact on the environmental consequences of an accident at Indian Point. At the very least, without completing the analysis, it is impossible to fully evaluate the environmental consequences of relicensing. Moreover, the FSEIS's discussion of the SAMA issue does not meaningfully respond to the concerns provided by Connecticut and New York in their previous submissions in this proceeding. As such, the FSEIS does not comply with 10 C.F.R. §§ 51.71(b) and 51.91(3)(b). The NRC has therefore failed to provide a thorough and accurate analysis of mitigation alternatives to severe accidents and thus has failed to take a "hard look" at the adverse impacts of this project. As a consequence, the FSEIS is fundamentally incomplete and the NRC Staff must provide the missing analyses and provide a meaningful and rational response to Connecticut and New York's concerns before proceeding.

As the Connecticut Attorney General has repeatedly brought to the attention of the ASLB, approximately one third of the State of Connecticut lies within the 50-mile

ingestion pathway zone for Indian Point. An accident or attack on Indian Point would therefore have an immediate and potentially devastating impact of the citizens of this state. Until NRC Staff provide a full accounting of demonstrably beneficial mitigation alternatives to reasonably foreseeable severe accidents, the citizens of Connecticut and their responsible officials will not be able to make informed decisions regarding the relicensing of this facility.

The Connecticut Attorney General therefore fully supports the Motion for Summary Disposition brought by the State of New York and urges the ASLB to grant the relief requested.

Respectfully submitted,

Robert Snook
Assistant Attorney General

Dated: February 3, 2011

CERTIFICATE OF SERVICE

I certify that on February 3, 2011, copies of the foregoing were served on the following by first-class mail and electronic mail on the following, as indicated below:

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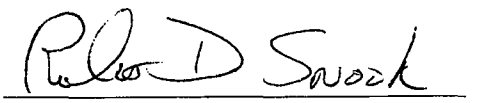

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