

April 27, 2011

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

NRC STAFF'S UNOPPOSED REQUEST FOR AN EXTENSION
OF TIME TO RESPOND TO THE STATE OF NEW YORK'S
MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS

Pursuant to 10 C.F.R. § 2.323(a), the NRC Staff ("Staff") hereby requests an extension of time of one week, until May 9, 2011, to respond to the "State of New York Motion to Compel NRC Staff to Produce Documents Relied Upon in Staff's Final Supplemental Environmental Impact Statement" (Motion") filed by the State of New York ("New York") on April 22, 2011. In support of this request, the Staff states as follows:

1. In its Motion, New York seeks to compel the Staff to produce or identify additional documents pertaining to the Staff's evaluation of severe accident mitigation alternatives ("SAMAs"), set forth in the Staff's Final Supplemental Environmental Impact Statement in this proceeding.¹ In particular, New York seeks the production of analyses or documents generated by the Staff's consultants at Information Systems Laboratories, Inc. ("ISLI") or Sandia National Laboratory ("Sandia") (Motion at 1-3, 12-14).

2. Significantly, New York does not seek the production of any documents which the Staff has previously identified as privileged in the numerous document disclosures which

¹ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3" (Dec. 2010) ("FSEIS").

the Staff has made since January 30, 2009; in this regard, New York avers: "The State does not seek to overturn any privilege designation made to date in this proceeding. Rather, the State seeks documents which Staff has not produced and not logged but which are clearly relevant to the State's admitted contentions" (*Id.* at 12; emphasis added). Similarly, New York observes that "Staff *has* logged documents that appear to communicate Sandia or ISLSI opinions to the Staff"— and indicates that "[t]he State does not challenge the Staff's privilege designation over documents the State has not asked for. However, the relevant documents have never been included on any disclosure log from Staff and never been produced" (*Id.* at 16; emphasis in original).

3. New York asserts that the Staff has failed to produce or identify documents as privileged (*Id.* at 5, 16, 17); that "Sandia generated analyses and reports that Staff never disclosed or logged as privileged" (*Id.* at 14); that the Staff has "refus[ed]" to produce such documents to the State (*Id.* at 4, 10); and that the Staff is in "willful disregard of [its] regulatory obligations" (*Id.* at 1). New York provides no factual basis for these assertions.

4. The Staff is cognizant of its document disclosure obligations in this proceeding, and believes that it has acted in accordance with those obligations. As Staff Counsel has previously pointed out to Counsel for New York, the Staff has produced or identified numerous documents pertaining to its evaluation of SAMA-related issues in its disclosures and privilege logs in this proceeding.² Nonetheless, in order to assure that it has produced or identified all responsive documents in accordance with its obligations in this proceeding, the Staff has again requested that its employees and consultants review the documents in their possession, to

² As indicated in the Declaration of Janice A. Dean submitted with New York's Motion, and Attachments 3 and 5 thereto, Counsel for the Staff has informed New York on several occasions that the Staff has identified numerous documents on its privilege logs that are responsive to New York's request. See E-mail from Sherwin Turk to Janice Dean, dated April 18, 2011 (Attachment 5 to New York's Motion).

assure that all documents which it is required to produce or identify, that are the subject of New York's Motion, have been (or are) disclosed or identified.

5. The Staff expects to conclude its further document review within the next week. If any additional documents are discovered that have not yet been produced or identified as privileged, the Staff will identify or produce them, consistent with the Staff's disclosure obligations under 10 C.F.R. §§ 2.336(b) and 2.1203(b).

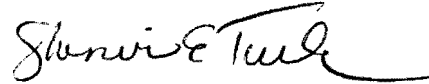
6. Pursuant to 10 C.F.R. § 2.323(c), the Staff is required to file its answer to New York's Motion within 10 days after the filing thereof, *i.e.*, on or before May 2, 2011. Inasmuch as the Staff expects to receive all facts necessary to definitively respond to the State's Motion within the next week, the Staff requests that it be permitted to respond to New York's Motion on or before May 9, 2011.

7. In accordance with 10 C.F.R. § 2.323(a), Staff Counsel has contacted Counsel for New York and Counsel for Entergy, both of whom have stated that they do not object to the Staff's request for an extension of time until May 9, 2011, to respond to New York's Motion.

8. The Staff submits that a one-week extension of time in which to file its answer to New York's Motion is reasonable and will assist the parties and Board to properly resolve the issues presented by New York's Motion. Further, the Staff submits that a one-week delay in the Staff's filing of its answer to New York's Motion will not cause hardship for any party or substantial delay in the proceeding.

WHEREFORE, the Staff respectfully requests that it be afforded an extension of time, until May 9, 2011, in which to file its answer to New York's motion to compel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sherwin E. Turk". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of April 2011

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR/286-LR
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S UNOPPOSED REQUEST FOR AN EXTENSION OF TIME TO RESPOND TO THE STATE OF NEW YORK'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS," dated April 27, 2011, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an deposit in the U.S. Postal Service, as indicated by an asterisk, with copies by electronic mail, this 27th day of April, 2011:

Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Lawrence.McDade@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
E-mail: OCAAMAIL.resource@nrc.gov

Dr. Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Richard.Wardwell@nrc.gov

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Hearing.Docket@nrc.gov

Dr. Kaye D. Lathrop
Atomic Safety and Licensing Board Panel
190 Cedar Lane E.
Ridgway, CO 81432
E-mail: Kaye.Lathrop@nrc.gov

Josh Kirstein, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-Mail: Josh.Kirstein@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001
(Via Internal Mail Only)

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan, Esq.
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
E-Mail: MJR1@westchestergov.com

Kathryn M. Sutton, Esq.*
Paul M. Bessette, Esq.
Jonathan Rund, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com
E-mail: jrund@morganlewis.com

John J. Sipos, Esq.*
Charlie Donaldson, Esq.
Assistants Attorney General
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, NY 12224
E-mail: John.Sipos@ag.ny.gov

Martin J. O'Neill, Esq.*
Morgan, Lewis & Bockius, LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
E-mail: martin.o'neill@morganlewis.com

Janice A. Dean, Esq.*
Assistant Attorney General,
Office of the Attorney General
of the State of New York
120 Broadway, 25th Floor
New York, NY 10271
E-mail: Janice.Dean@ag.ny.gov

Elise N. Zoli, Esq.*
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, MA 02109
E-mail: ezoli@goodwinprocter.com

Joan Leary Matthews, Esq.*
Senior Attorney for Special Projects
New York State Department of
Environmental Conservation
Office of the General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500
E-mail: jlmatthe@gw.dec.state.ny.us

William C. Dennis, Esq.*
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
E-mail: wdennis@entergy.com

John Louis Parker, Esq.*
Office of General Counsel, Region 3
New York State Department of
Environmental conservation
21 South Putt Corners Road
New Paltz, NY 12561-1620
E-mail: jlparker@gw.dec.state.ny.us

Daniel E. O'Neill, Mayor*
James Seirmarco, M.S.
Village of Buchanan
Municipal Building
Buchanan, NY 10511-1298
E-mail: vob@bestweb.net
E-mail: smurray@villageofbuchanan.com

Robert Snook, Esq.*
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CN 06141-0120
E-mail: robert.snook@ct.gov

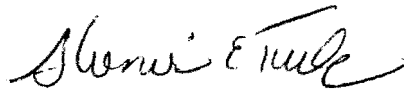
Phillip Musegaas, Esq.*
Deborah Brancato, Esq.
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
E-mail: phillip@riverkeeper.org
dbrancato@riverkeeper.org

Michael J. Delaney, Esq.*
Director, Energy Regulatory Affairs
New York City Department of Environmental
Protection
59-17 Junction Boulevard
Flushing, NY 11373
E-mail: mdelaney@dep.nyc.gov

Manna Jo Greene*
Stephen Filler
Hudson River Sloop Clearwater, Inc.
724 Wolcott Avenue
Beacon, NY 12508
E-mail: mannajo@clearwater.org
E-mail: stephenfiller@gmail.com

Daniel Riesel, Esq.*
Thomas F. Wood, Esq.
Ms. Jessica Steinberg, J.D.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
E-mail: driese1@sprlaw.com
jsteinberg@sprlaw.com

Ross H. Gould, Esq.*
270 Route 308
Rhinebeck, NY 12572
T: 917-658-7144
E-mail: rgouldesq@gmail.com



Sherwin E. Turk
Counsel for NRC Staff