

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  
ENERGY NUCLEAR OPERATIONS, INC.  
(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

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

April 29, 2011

ORDER

(Granting NRC Staff's Unopposed Motion for Extension of Time and  
Providing Instructions for Submission of Documents for In Camera Inspection)

The NRC Staff has moved unopposed to extend the time within which it may answer a pending Motion to Compel filed on April 22, 2011, by the State of New York (New York).<sup>1</sup> The NRC Staff represents it has asked "that its employees and consultants review the documents in their possession, to 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."<sup>2</sup> To complete this process, the NRC Staff requests that its deadline to respond to New York's Motion to Compel be extended from May 2, 2011, to May 9, 2011.<sup>3</sup>

The NRC Staff's Motion comes nearly three months after New York requested the documents at the heart of its Motion to Compel<sup>4</sup> and less than two months before New York's direct testimony on contentions

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<sup>1</sup> 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 (Apr. 27, 2011) [hereinafter NRC Staff Motion]; see State of New York Motion to Compel NRC Staff to Produce Documents Relied Upon in Staff's Final Supplemental Environmental Impact Statement (Apr. 22, 2011) [hereinafter New York Motion to Compel]. New York has filed an Answer to the NRC Staff's Motion that responds to points raised in the NRC Staff's Motion, but does not oppose the NRC Staff's Motion. See State of New York Answer to NRC Staff's Unopposed Motion for Extension of Time (Apr. 28, 2011) at 1.

<sup>2</sup> NRC Staff Motion at 2-3.

<sup>3</sup> Id. at 3.

<sup>4</sup> See New York Motion to Compel at 2-3.

potentially related to these documents is due.<sup>5</sup> Given the time expended to date as a critical evidentiary hearing milestone approaches, we are more skeptical than the NRC Staff that this additional “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.”<sup>6</sup> Nevertheless, because the NRC Staff’s Motion is unopposed and appears to be aimed at resolving this dispute, we hereby grant the NRC Staff’s Motion for an extension of time to respond to New York’s Motion to Compel.

In addition to the documents that the NRC Staff has pledged to search for and produce or identify as privileged no later than May 9, 2011, the instant discovery dispute questions whether certain documents already withheld by the NRC Staff have been appropriately categorized and described in its privilege logs. Accordingly, in order to expedite a full resolution of the issues presented by New York’s Motion to Compel and in accord with our duties pursuant to 10 C.F.R. § 2.319, we direct that on or before May 9, 2011, the NRC Staff shall electronically submit to the Board for in camera inspection those documents it has claimed as privileged (as well as any newly identified documents for which the NRC Staff desires to withhold or claim as privileged) that were generated or reviewed by Information Systems Laboratories, Inc. and/or Sandia National Laboratory in conjunction with the NRC Staff’s environmental review of Entergy Nuclear Operations, Inc.’s License Renewal Application for Indian Point Units 2 and 3 that are the subject of New York’s Motion to Compel. This in camera filing shall also include a justification for and an explanation of why a privilege is applicable to each document. Once the Board is in receipt of these documents and their accompanying explanations, we will evaluate the privilege claims and, if appropriate, expeditiously order the production of

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<sup>5</sup> See id. at 5 (arguing that “preparation of direct testimony on contentions including Contentions 12/12A/12B and 16/16A/16B is due in less than 60 days. Staff has not provided the documents it should have produced when it issued the FSEIS, documents the State requested three months ago. This Motion to Compel is essential to permit the State to fully prepare its case.”); Licensing Board Scheduling Order (July 1, 2010) at para. K.1 (unpublished).

<sup>6</sup> See NRC Staff Motion at 3.

any documents that we find may not be properly withheld as privileged.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>7</sup>

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 29, 2011

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<sup>7</sup> Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy Nuclear Operations, Inc.; (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 Sean Murray, the Representative for the Village of Buchanan; and (10) Michael J. Delaney, counsel for the City of New York.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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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 (Granting NRC Staff's Unopposed Motion for Extension of Time and Providing Instructions for Submission of Documents for In Camera Inspection) has been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
Mail Stop O-7H4M  
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

Administrative Judge  
Lawrence G. McDade, Chair

Sherwin E. Turk, Esq.  
Beth N. Mizuno, Esq.  
David E. Roth, Esq.  
Brian Harris, Esq.

Administrative Judge  
Richard E. Wardwell

Andrea Z. Jones, Esq.  
Emily L. Monteith, Esq.  
Karl Farrar, Esq.

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

Brian Newell, Paralegal

Joshua A. Kirstein, Law Clerk

Docket Nos. 50-247-LR and 50-286-LR  
ORDER (Granting NRC Staff's Unopposed Motion for Extension of Time and Providing Instructions  
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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.  
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, 14<sup>th</sup> 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.  
724 Wolcott Ave.  
Beacon, NY 12508

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Sean Murray, Mayor  
Kevin Hay, Village Administrator  
Village of Buchanan  
Municipal Building  
236 Tate Avenue  
Buchanan, NY 10511-1298

Manna Jo Greene, Environmental Director  
Hudson River Sloop Clearwater, Inc.  
724 Wolcott Ave.  
Beacon, New York 12508

Ross Gould, Board Member  
Hudson River Sloop Clearwater, Inc.  
270 Route 308  
Rhinebeck, NY 12572

Counsel for the Town of Cortlandt  
Thomas F. Wood, Esq.  
Daniel Riesel, Esq.  
Jessica Steinberg, J.D.  
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

Melissa-Jean Rotini, of counsel  
Assistant County Attorney  
Office of Robert F. Meehan,  
Westchester County Attorney  
148 Martine Avenue, 6<sup>th</sup> 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

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Philip Musegaas, Esq.  
Deborah Brancato, Esq.  
Riverkeeper, Inc.  
20 Secor Road  
Ossining, NY 10562

Richard L. Brodsky, Esq.  
Member of Assembly  
92<sup>nd</sup> Assembly District,  
State of New York  
5 West Main Street  
Suite 205  
Elmsford, NY 10523

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

[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 29<sup>th</sup> day of April 2011