



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 12, 2011

Janice A. Dean  
Assistant Attorney General  
Office of the NYS Attorney General  
120 Broadway, 26th Floor  
New York, New York 10271

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

Dear Ms. Dean:

I am writing in response to your letter of May 11 and your E-mail message of earlier today, concerning the list of documents provided in Appendix A to the NRC Staff's Answer to the State of New York's Motion to Compel the Production of Documents," filed on May 9, 2011. In your letter, *inter alia*, you pointed out that certain unspecified "DPP" numbers for documents listed in Appendix A do not correspond to the DPP numbers shown in the Staff's privilege logs; in your E-mail message, you provided some examples of this problem, specifying documents that were identified as DPP-26-017, DPP-26-019, DPP-26-20, and DPP-26-21.

After receiving your letter and message, we looked at Appendix A, and were able to see the problem. There are 46 documents listed in Appendix A (listing potentially responsive documents for which the Staff had previously asserted the deliberative process privilege, for the Board's review). Appendix A was prepared by electronically copying document descriptions from the privilege logs that had been submitted with the Staff's Hearing File and Supplements, into a new Table (Appendix A). In the process of electronically moving those document descriptions into Appendix A, some of the previously identified DPP numbers appear to have been inadvertently dropped into the lines for other documents. While the document descriptions and ADAMS accession (ML) numbers did not change, some of the associated DPP numbers appear to be correct.

The Staff will undertake to search the DPP logs to verify the correctness of the DPP numbers for the documents listed in Appendix A, and if incorrect, will provide a corrected DPP number for those documents. The Staff will then submit a corrected Appendix A to the Board and parties, probably by Monday, May 16. I am writing to the Board to bring this matter to its attention, and to advise the Board that a corrected Appendix A will be transmitted shortly.

I do not agree with the other points stated in your letter, which appear to be based upon a misreading of our Answer and/or a misunderstanding of Appendix A. Appendix A was neither intended nor stated to represent a copy of the Staff's privilege logs. If that had been the purpose, we could have merely attached copies of the prior privilege logs, with an indication of which documents were at issue. Rather, the Board's Order of April 29, 2011, directed the Staff

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to provide "a justification for and an explanation of why a privilege is applicable to each document." (Order at 2). To comply with this directive, in our Answer we provided a "general" description of the bases for the assertion of privilege (Answer at 19 and 20) -- and explicitly stated that "[a] statement of the basis for withholding each document is provided in Appendices A, B and C." (*Id.* at 20). The information contained in Appendix A (like the information provided in Appendices B and C) was provided to comply with the Board's directive.

Thank you for bringing these matters to our attention.

Sincerely,

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

Sherwin E. Turk  
Special Counsel for Litigation

cc: John Sipos