

Attachment 6

NRC Staff's Letter to the State of New York
dated December 31, 2009



OFFICE OF THE
GENERAL COUNSEL

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

December 31, 2009

John J. Sipos, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, NY 12224

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

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

Dear Mr. Sipos and Ms. Dean:

I am writing in response to your letter to me dated October 21, 2009, in which you questioned whether certain documents should have been identified by the NRC Staff ("Staff") in its hearing file and/or mandatory disclosures in this proceeding. Specifically, you mentioned Exhibits E-L and O-Q of the "NRC Staff's Response In Opposition To State of New York's ["New York's"] Motion for Partial Summary Disposition of NYS Contention 16/16A," filed October 13, 2009 ("Answer"), and Stephen LaVie's PowerPoint presentation regarding "Dispersion" in the 2009 National Radiological Emergency Planning Conference (which was attached as Exhibit 4 to the "State of New York's Motion for Summary Disposition of Contention 16/16A" ("Motion for Partial Summary Disposition"), dated August 28, 2009.

We have reviewed each of the documents cited in your letter, and are satisfied that the Staff's document disclosure and hearing file obligations have been properly adhered to in each instance. In this regard, we note that many of the documents cited in your letter constitute regulatory guidance or other generically applicable documents, which do not relate to the Indian Point license renewal application ("LRA") and/or were not utilized by the Staff in its review of that application. More specifically, we note, in part, as follows:

Exhibits E, F, G, H, and I were not utilized in the Staff's review of the Indian Point LRA. Exhibit E is a generic guidance document issued by the Nuclear Energy Institute ("NEI"). Exhibits F, G, H, and I are generic guidance documents concerning the preparation of

Probabilistic Risk Assessments ("PRAs"); these documents provide basic information regarding PRAs, in general, and were attached to the Staff's Answer only to respond to the claims made by your Declarant, Dr. Bruce Egan, in support of your Motion for Partial Summary Disposition.

Exhibit J (NUREG/BR-0184) pertains to the preparation of PRAs and accident cost valuations); Exhibit K (NUREG/CR-6613) pertains to the MACCS2 Code. These documents were identified by the Staff in the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3," ("Draft SEIS") NUREG-1437, Supplement 38, Vols. 1 and 2. See, e.g., pages 5-8, 5-12, G-4, G-27, G-28, G-29, G-31, and G-37. In addition, these documents are readily available through the NRC website, the Agencywide Documents Access and Management System ("ADAMS"), and/or the NRC's Public Document Room ("PDR").

Exhibit L (NUREG/CR-6853, the Lawrence Livermore report) constitutes a partial document, the complete version of which you had filed as Exhibit 5 in support of your Motion for Partial Summary Disposition. This document was not utilized by the Staff in its review of the Indian Point license renewal application, and was only provided to respond to the claims made by your Declarant, Dr. Bruce Egan, in support of your Motion for Partial Summary Disposition.

Exhibits O, P and Q are documents issued by the Environmental Protection Agency or units thereof, and were not utilized by the Staff in its review of the Indian Point license renewal application. These documents provide information related to AERMOD and CALPUFF (New York's preferred meteorological models), and were provided only to respond to the claims made by your Declarant, Dr. Bruce Egan, in support of your Motion for Partial Summary Disposition.

Finally, Stephen LaVie's PowerPoint presentation, which the State had filed in support of its Motion for Partial Summary Disposition, was not utilized by the Staff in its review of the Indian Point license renewal application. Moreover, as the Staff indicated in its Answer to the State's Motion, Mr. LaVie's presentation is wholly unrelated to LRA SAMA analyses.

The NRC has adopted extensive procedures to assure that members of the public and litigants in NRC proceedings are able to obtain access to documents which may be relevant to the NRC's regulatory and licensing actions. For example, the NRC publishes its regulatory guidance documents in paper and electronic format, and makes those documents available on the NRC public Web site and in the PDR. In addition, a vast array of generic and plant-specific documents may be found in ADAMS. Finally, various enumerated categories of documents related to individual licensing actions are required to be disclosed by the Staff and other parties pursuant to 10 C.F.R. § 2.336, and in the Staff's hearing file pursuant to 10 C.F.R. § 2.1203.

The Staff expends considerable effort to fulfill its mandatory disclosure and hearing file obligations in accordance with NRC regulatory requirements. Those requirements do not require the disclosure, in each individual adjudicatory proceeding, of the numerous generic regulatory guidance documents that may apply to the type of licensing action involved in the proceeding, nor is the Staff required to identify documents that are not related to the licensing action at issue in the proceeding. Such documents may be obtained through other means, including ADAMS, the NRC website, the PDR, and other sources.

Mr. Sipos
Ms. Dean

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December 31, 2009

Thank you for bringing your views on this matter to my attention. With best wishes for a happy, healthy and productive New Year,

Sincerely,

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