

February 8, 2012

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 STATEMENT IN RESPONSE TO THE ATOMIC
SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 3, 2012

In accordance with the Atomic Safety and Licensing Board's ("Board") "Order (Requesting Information from the NRC Staff and All Participants)" ("Order") of February 3, 2012, the NRC Staff ("Staff") herewith provides the following information:

1. In accordance with 10 C.F.R. § 2.1202(b)(2), the Staff has determined that it intends to participate as party in this adjudicatory proceeding with respect to all admitted contentions. Since the Board issued its initial ruling on petitions to intervene,¹ the Staff has, in fact, actively participated as a party in this proceeding regarding all admitted contentions.

2. Consistent with the findings and conclusions set forth in the Staff's Safety Evaluation Report ("SER"), SER Supplement 1, and Final Supplemental Environmental Impact Statement ("FSEIS") in this proceeding, the Staff anticipates that its testimony and statements of position will generally support the issuance of a renewed license for Indian Point Units 2 and 3. Accordingly, while the Staff has not yet seen the testimony and statements of position to be submitted by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), the Staff's position is likely to support Entergy's positions on the admitted contentions. The Staff notes, however,

¹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

that it may not be able to state a position on Contention NYS-25 (Reactor Vessel Internals) until it has received and reviewed the additional information that Entergy plans to submit to the Staff on February 17, 2012, concerning Entergy's Reactor Vessel Internals Aging Management Program and Inspection Plan.² See discussion *infra*, ¶ 3(b).

3. The Staff is aware of the following matters that have the potential to affect the schedule in this proceeding:

- (a) As stated in the Staff's pending request for an extension of time for the filing of the Staff's and Applicant's testimony, exhibits, and statements of position, an extension of time for the filing of those documents is required to afford time for the Staff (1) to review and prepare rebuttal to the Intervenor's voluminous evidentiary filings, (2) to respond to Applicant's seven pending motions *in limine*, and (3) to respond to the State of New York and Riverkeeper, Inc.'s pending motion to compel.³
- (b) As noted above, Entergy plans to submit additional information on February 17, 2012, concerning its Reactor Vessel Internals Aging Management Program and Inspection Plan, to address the recent issuance of MRP-227-A. If the Staff determines that it requires additional information from Entergy regarding its submittal, the Staff may find it necessary to defer filing its testimony and statement of position on Contention NYS-25 pending completion of its review of that matter; a deferral of the Staff's filings on Contention NYS-25 would not affect the litigation of any admitted contention other than Contention NYS-25 and Contention NYS-38/RKTC-5 (presently deferred).
- (c) On February 6, 2012, the National Marine Fisheries Service ("NMFS") published a notice in the Federal Register, listing the Atlantic sturgeon as an endangered species under the Endangered Species Act ("ESA").⁴ The Staff expects to

² See letter from Sherwin E. Turk to the Board (Jan. 27, 2012).

³ See "NRC Staff's Unopposed Motion for Extension of Time for the Filing of Testimony, Exhibits and Statements of Position" (Feb. 2, 2012).

⁴ See "Final Rule, Endangered and Threatened Wildlife and Plants; Threatened and Endangered Status for Distinct Population Segments of Atlantic Sturgeon in the Northeast Region, Part II," 77 Fed. Reg. 5880 (Feb. 6, 2012) (providing NMFS' final determination to list the Gulf of Maine Distinct Population Segment (DPS) of Atlantic sturgeon as a threatened species under the Endangered Species Act, and the New York Bight and Chesapeake Bay DPSs of Atlantic sturgeon as endangered species under the ESA, and soliciting information relevant to the designation of critical habitat for all three DPSs in the Northeast Region) (to be effective April 6, 2012) (<http://www.gpo.gov/fdsys/pkg/FR-2012-02-06/pdf/2012-1946.pdf>); see also, "Final Rule, "Endangered and Threatened Wildlife and Plants; Final Listing Determinations for Two Distinct Population Segments of Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*) in the Southeast, Part III," 77 Fed. Reg. 5914 (Feb. 6, 2012) (providing NMFS' final determination to list the Carolina and South Atlantic distinct population segments of Atlantic sturgeon as an endangered species) (<http://www.gpo.gov/fdsys/pkg/FR-2012-02-06/pdf/2012-1950.pdf>).

communicate with NMFS and to reinitiate consultations regarding this development under Section 7 of the ESA. The Staff is also considering what effect this development may have on the schedule for issuance of the Draft FSEIS Supplement, in which the Staff plans to address the Biological Opinion and Incidental Take Statement issued by NMFS concerning the endangered shortnose sturgeon. Any delay in the issuance of the Draft FSEIS Supplement could affect the schedule for litigation of Riverkeeper Contention EC-8 (presently deferred), but would not affect the litigation of any other admitted contention.

4. The Staff is not currently aware of any other matter that has the potential to further delay this proceeding.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 8th day of February 2012

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S STATEMENT IN RESPONSE TO ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 3, 2012," dated February 8, 2012, in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 8th day of February, 2012.

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