



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

September 28, 2012

Administrative Judge
Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael F. Kennedy
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Dear Administrative Judges:

Pursuant to the Atomic Safety and Licensing Board's December 18, 2008, "Memorandum and Order (Addressing Requests that the Proceeding be Conducted Pursuant to Subpart G)," slip op. at 13, and the Licensing Board's "Order (Granting Consent Motion Regarding Mandatory Disclosures)," dated January 30, 2009, at 1, the staff of the U.S. Nuclear Regulatory Commission ("Staff") herein notifies the Licensing Board and the parties that the hearing file has been supplemented for this proceeding. Materials in the hearing file may be accessed through the Agencywide Documents Access and Management System ("ADAMS"). An index containing the ADAMS accession number, date, and title or description of each item in Hearing File Index, Supplement 44 is appended hereto as Attachment 1.

On or about October 10, 2012, the documents identified in the hearing file will be made available via the Electronic Hearing Docket ("EHD"), which may be accessed at the following URL: http://ehd.nrc.gov/EHD_Proceeding/home.asp. The hearing file will be contained in a sub-folder entitled, "Indian PT Hearing File, Supplement 44" in the "Indian_PT_2&3_50-247&50-286-LR" folder of the EHD.

In addition, as required by 10 C.F.R. § 2.336(b)(5), the Staff is producing a privilege log, identifying documents withheld under the deliberative process privilege, which is appended hereto as Attachment 2. Also attached is the Declaration of John W. Lubinski formally invoking the deliberative process privilege with respect to the documents in Attachment 2.

Judge McDade
Judge Kennedy
Judge Wardwell

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September 28, 2012

The Staff will preserve and maintain the privileged documents identified in the log during the pendency of this proceeding.

Further, pursuant to 10 C.F.R. § 2.336(c), attached is the Affidavit of Michael J. Wentzel, certifying that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as to documents identified by September 24, 2012.

Finally, the NRC Staff notes that it has made a good faith effort to identify and characterize all documents meeting the criteria of 10 C.F.R. § 2.336(b) and 10 C.F.R. § 2.1203 in this proceeding. In identifying these documents, the Staff does not concede their relevance to the license renewal issues to be decided in this proceeding.

Sincerely,

Signed (electronically) by
Anita Ghosh
Counsel for NRC Staff

Enclosures: Attachment 1 - Hearing File Index, Supplement 44
Attachment 2 - Deliberative Process Privilege Log
Declaration of John W. Lubinski
Affidavit of Michael J. Wentzel

cc w/Encls.: Service List

Attachment 1 - Indian Point License Renewal Hearing File Index
 Supplement 44 – September 28, 2012

ID#	Accession Number	Document Date	Title
44-0001	ML12223A367	09/12/2012	08/08/2012 Summary of Telephone Conference Call Held between NRC and Entergy Nuclear Operations, Inc., Concerning RAI Set 2012-02, Reactor Vessel Internals Program Pertaining to the Indian Point, Units 2 & 3, License Renewal Application.
44-0002	ML12256A922	08/19/2012	2012/08/19 Indian Point LR Hearing - Re: Hi- quick question
44-0003	ML12256A921	08/20/2012	2012/08/20 Indian Point LR Hearing - Meeting with Sing Sing Correctional Facility Superintendent Michael Capra
44-0004	ML12235A954	08/22/2012	2012/08/22 Indian Point LR Hearing - Question on License Renewal
44-0005	ML12242A321	08/29/2012	2012/08/29 Indian Point LR Hearing - ESA Conference Call with NMFS
44-0006	ML12242A357	08/29/2012	2012/08/29 Indian Point LR Hearing - RE: ESA Conference Call with NMFS
44-0007	ML12243A079	08/29/2012	2012/08/29 Indian Point LR Hearing - RE: ESA Conference Call with NMFS
44-0008	ML12243A082	08/30/2012	2012/08/30 Indian Point LR Hearing - RE: ESA Conference Call with NMFS
44-0009	ML12243A080	08/30/2012	2012/08/30 Indian Point LR Hearing - RE: ESA Conference Call with NMFS
44-0010	ML12249A282	09/05/2012	2012/09/05 Indian Point LR Hearing - RE: September 12 Phone Call With NMFS
44-0011	ML12249A281	09/05/2012	2012/09/05 Indian Point LR Hearing - September 12 Phone Call With NMFS
44-0012	ML12258A044	09/06/2012	2012/09/06 Indian Point Hearing - FW: Comment (3) of Edward McTieman on behalf of NYSDEC, on Draft Supplement to Supplement 38 to Generic EIS for License Renewal Nuclear Plants Indian Point, Units 2 & 3. 08/20/2012.
44-0013	ML12254B148	09/10/2012	2012/09/10 Indian Point LR Hearing - Draft RAI 16, RVI program
44-0014	ML12256B039	09/12/2012	2012/09/12 Indian Point LR Hearing - Meeting Participants
44-0015	ML12256A919	09/12/2012	2012/09/12 Indian Point LR Hearing - Questions From NMFS For Today's Phone Call
44-0016	ML12256B040	09/12/2012	2012/09/12 Indian Point LR Hearing - RE: Meeting Participants
44-0017	ML12256A920	09/12/2012	2012/09/12 Indian Point LR Hearing - RE: Questions From NMFS For Today's Phone Call
44-0018	ML12257A245	09/13/2012	2012/09/13 Indian Point LR Hearing - Draft record of conference call held on June 4, 2012
44-0019	ML12261A024	09/17/2012	2012/09/17 Indian Point LR Hearing - FW: Draft record of conference call held on June 4, 2012
44-0020	ML12261A384	09/17/2012	2012/09/17 Indian Point LR Hearing - RE: Draft record of conference call held on June 4, 2012
44-0021	ML12263A419	09/19/2012	2012/09/19 Indian Point LR Hearing - Meeting Summary
44-0022	ML12264A318	09/19/2012	2012/09/19 Indian Point LR Hearing - NYS DOCCS, DHSES-OEM and NRC Meeting on 26 September 2012 2PM NYSDOCCS HQ
44-0023	ML12264A027	09/19/2012	2012/09/19 Indian Point LR Hearing - RE: Meeting Summary
44-0024	ML12215A038	08/28/2012	5-24-12 Summary of Conference Call Held between NRC and Entergy Nuclear Operations, Inc., Concerning the Reactor Vessel Internals Program at Indian Point, Units 2 & 3.

Attachment 1 - Indian Point License Renewal Hearing File Index
 Supplement 44 – September 28, 2012

ID#	Accession Number	Document Date	Title
44-0025	ML12230A106	08/07/2012	Comment (1) of John K. Bullard, on Behalf of the US Dept. of Commerce, NOAA, on Draft Supplement to the Final Plant-Specific Supplement 38 to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS)....
44-0026	ML12234A093	08/17/2012	Comment (2) of Arthur J. Kremer on Behalf of New York Affordable Reliable Electricity Alliance (New York AREA), on Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 38 Regarding Indian Point Nuclear Generating....
44-0027	ML12235A149	08/20/2012	Comment (3) of Edward F. McTieman on behalf of NY, Dept of Environmental Conservation, on Draft Supplement to Supplement 38 to Generic Environmental Impact Statement for License Renewal Nuclear Plants Indian Point, Units 2 & 3.
44-0028	ML12235A409	08/20/2012	Comment (4) of John J. Sipos on Behalf of State of NY, Office of the Attorney General, on Draft Supplement to Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating....
44-0029	ML12235A410	08/20/2012	Comment (5) of Andrew L. Raddant on Behalf of the U.S. Dept. of the Interior on the Draft Supplement to Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plant, NUREG-1427, Indian Point, Units 2 and 3.
44-0030	ML12236A207	08/20/2012	Comment (6) of Deborah Brancato on NRC's Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Vol. 4, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3.
44-0031	ML12244A002	08/20/2012	Comment (7) of Fred Dacimo on Behalf of Entergy Nuclear Northeast on Draft Supplement to the Final Plant-Specific Supplement 38 to NUREG-1437, Regarding License Renewal of Indian Point Nuclear Generating Units 2 and 3.
44-0032	ML12244A003	08/14/2012	Comment (8) of Judy-Ann Mitchell on Behalf of (EPA), on Draft Supplement to Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants....
44-0033	ML12223A388	09/10/2012	RAI for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, LRA , Set 2012-02 (TAC NOS. MD5407 and MD5408).
44-0034	ML12258A232	09/11/2012	Response to Request for Additional Information for Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review - Compliance with Coastal Zone Management Act.
44-0035	ML12215A248	09/17/2012	Summary of Conference Call Held on June 4, 2012, Between the U.S. Nuclear Regulatory Commission and Entergy Nuclear Operations, Inc., Concerning the Reactor Vessel Internals Program at Indian Point Nuclear Generating Station, Units 2 and 3.

Attachment 2 - Indian Point License Renewal Hearing File Index
 Deliberative Process Privilege, Supplement 44 – September 28, 2012

Certain documents otherwise subject to inclusion in the hearing file and mandatory disclosures for this proceeding have been determined by the NRC Staff to contain information subject to withholding from public disclosures as predecisional, deliberative information. Pursuant to 10 C.F.R. § 2.336(b)(5), the Staff is providing this log to identify the following documents, withheld under the "deliberative process" privilege.

ID #	Accession Number	Author Name & Author Affiliation	Title	Document Date	Document Type	Addressee Name & Addressee Affiliation	Comment	Estimated Page Count
DP-44-001	ML12235A948	O. Yee, NRC/NRR	2012/08/22 Indian Point LR Hearing - Revisions to draft follow-up RAI 15 based on meeting with OGC	08/22/2012	E-Mail w/ attachment	J. Daily, A. Hiser, J. Poehler, C. Ng, NRC/NRR	Email forwarding draft document Attachment: Draft RAI	4
DP-44-002	ML12235A977	J. Poehler, NRC/NRR	2012/08/22 Indian Point LR Hearing - Revisions to Follow-Up RAI 13 and 15 Based on Meeting With OGC	08/22/2012	E-Mail w/ attachment	J. Daily, A. Hiser, O. Yee, C. Ng, NRC/NRR	Email forwarding draft document Attachment: Draft RAI	9
DP-44-003	ML12237B189	J. Daily, NRC/NRR	2012/08/24 Indian Point LR Hearing - RE: Revisions to Follow-Up RAI 13 and 15 Based on Meeting With OGC	08/24/2012	E-Mail w/ attachment	J. Poehler, O. Yee, A. Hiser, C. Ng, NRC/NRR	Internal discussion draft RAI Attachment: Draft RAI	10
DP-44-004	ML12240A343	J. Poehler, NRC/NRR	2012/08/27 Indian Point LR Hearing - RE: Revisions to Follow-Up RAI 13 and 15 Based on Meeting With OGC	08/27/2012	E-Mail	J. Daily, O. Yee, A. Hiser, C. Ng, NRC/NRR	Internal discussion of draft RAI	3
DP-44-005	ML12240A016	O. Yee, NRC/NRR	2012/08/27 Indian Point LR Hearing - RE: Revisions to Follow-Up RAI 13 and 15 Based on Meeting With OGC	08/27/2012	E-Mail	J. Daily, J. Poehler, A. Hiser, C. Ng, NRC/NRR	Internal discussion of draft RAI	2

Attachment 2 - Indian Point License Renewal Hearing File Index
 Deliberative Process Privilege, Supplement 44 – September 28, 2012

ID #	Accession Number	Author Name & Author Affiliation	Title	Document Date	Document Type	Addressee Name & Addressee Affiliation	Comment	Estimated Page Count
DP-44-006	ML12269A419	J. Crocker, National Oceanic and Atmospheric Administration (NOAA)	2012/08/29 Indian Point LR Hearing - conference call to discuss Entergy report re. sturgeon	08/29/2012	E-Mail	D. Logan, B. Balsam, NRC/NRR	Discussion regarding NMFS consultation	2
DP-44-007	ML12242A515	M. Wentzel, NRC/NRR	2012/08/29 Indian Point LR Hearing - Summary of Comments on the Indian Point Draft FSEIS Supplement	08/29/2012	E-Mail	D. Wrona, NRC/NRR	Internal discussion regarding comments received on Draft FSEIS Supplement	3
DP-44-008	ML12250A741	J. Poehler, NRC/NRR	2012/09/06 Indian Point LR Hearing - FW: Indian Point, Units 2 & 3, Follow-Up Request for Additional Information Related to Amendment 9 to License Renewal Application - Reactor Vessel Internals Program and Reactor Vessel Internals Inspection Plan	09/06/2012	E-Mail w/ attachment	J. Daily, NRC/NRR	Email forwarding draft document Attachment: Internal memorandum regarding follow-up request for additional information	8

Attachment 2 - Indian Point License Renewal Hearing File Index
 Deliberative Process Privilege, Supplement 44 – September 28, 2012

ID #	Accession Number	Author Name & Author Affiliation	Title	Document Date	Document Type	Addressee Name & Addressee Affiliation	Comment	Estimated Page Count
DP-44-009	ML12254A056	J. Daily, NRC/NRR	2012/09/10 Indian Point LR Hearing - New draft RAI for Indian Point 2 - 3, RVI components	09/10/2012	E-Mail w/ attachment	S. Turk, NRC/OGC	Email sending draft RAI Attachment: Draft RAI	3
DP-44-010	ML12254B146	J. Daily, NRC/NRR	2012/09/10 Indian Point LR Hearing - RE: FW: New draft RAI for Indian Point 2 - 3, RVI components	09/10/2012	E-Mail	B. Harris, S. Turk, NRC/OGC	Internal discussion of draft RAI	2
DP-44-011	ML12255A319	J. Crocker, NOAA	2012/09/11 Indian Point LR Hearing - Re: conference call to discuss Entergy report re. sturgeon	09/11/2012	E-Mail w/ attachment	B. Balsam, NRC/NRR	Email forwarding document Attachment: Draft NMFS questions related to Entergy's sturgeon report	6

Attachment 2 - Indian Point License Renewal Hearing File Index
 Deliberative Process Privilege, Supplement 44 – September 28, 2012

ID #	Accession Number	Author Name & Author Affiliation	Title	Document Date	Document Type	Addressee Name & Addressee Affiliation	Comment	Estimated Page Count
DP-44-012	ML12263A417	B. Balsam, NRC/NRR	2012/09/19 Indian Point LR Hearing - FW: conference call to discuss Entergy report re. sturgeon	09/19/2012	E-Mail w/ attachment	M. Wentzel, D. Logan, NRC/NRR	Internal discussion of NMFS questions Attachment: Draft NMFS questions related to Entergy's sturgeon report	8
DP-44-013	ML12269A424	J. Crocker, NOAA	2012/09/19 Indian Point LR Hearing - Re: conference call to discuss Entergy report re. sturgeon	09/19/2012	E-Mail	B. Balsam, D. Logan, NRC/NRR	Discussion of conference call Attachment: Draft NMFS questions related to Entergy's sturgeon report	8
DP-44-014	ML12235A507	S. Rosenberg, NRC/NRR	Indian Point, Units 2 & 3, Follow-Up Request for Additional Information Related to Amendment 9 to License Renewal Application - Reactor Vessel Internals Program and Reactor Vessel Internals Inspection Plan.	08/28/2012	Memo	D. Wrona, NRC/NRR	Internal memorandum regarding follow-up request for additional information	3

Attachment 2 - Indian Point License Renewal Hearing File Index
 Deliberative Process Privilege, Supplement 44 – September 28, 2012

ID #	Accession Number	Author Name & Author Affiliation	Title	Document Date	Document Type	Addressee Name & Addressee Affiliation	Comment	Estimated Page Count
DP-44-015	ML12257A346	D. Logan, NRC/NRR; V. Cullinan, J. Ward, Pacific Northwest National Laboratory (PNNL)	Technical Analysis and Support Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Generating Unit Nos. 2 and 3, Volume 4 Draft Report for Comment (NUREG 1437, Suppl. 38, Vol. 4, June 2012)	09/13/2012	Draft Report	N/A	Draft Report	98

September 28, 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 & 50-286-LR
)
)
(Indian Point Nuclear Generating Units 2 and 3))

DECLARATION OF JOHN W. LUBINSKI

I, John W. Lubinski, do hereby state as follows:

1. I am employed as the Director of the Division of License Renewal (“DLR”) in the U.S. Nuclear Regulatory Commission’s (“NRC”) Office of Nuclear Reactor Regulation (“NRR”). My supervisory responsibilities include oversight of the NRC Staff’s review and evaluation of the Indian Point Nuclear Generating Units 2 and 3 license renewal application.

2. As part of their responsibilities in updating the hearing file and mandatory disclosures for these proceedings, NRC staff members under my supervision identified documents as privileged because they contained information concerning the Staff’s pre-decisional deliberative process. The documents are listed in Attachment 2 to the submission of the Staff’s Hearing File Index Supplement 44.

3. I have personally reviewed the documents identified as privileged in Attachment 2, and have determined, in accordance with the guidance set forth in Management Directive 3.4, that they contain pre-decisional information concerning the Staff’s review of the license renewal application. The documents contain either the Staff’s analyses, recommendations, opinions, or evaluations, and may not necessarily reflect the final agency

position with respect to the matters discussed therein. The documents comprise part of the deliberative process necessary for the Staff's review of the pending license renewal application.

4. Further, I have determined that disclosure of the documents could result in harm to the agency, in that it would (a) prematurely disclose the preliminary views of individual Staff members and/or the Staff prior to reaching a final agency decision, and could thus create confusion as to the actual policy or views of the NRC Staff; (b) hinder the efficiency of the Staff, in that forced disclosure of its internal discussions on an unresolved issue would tend to chill all future deliberations and would interfere with the Staff's ability to engage in a free exchange of opinions and analyses prior to publishing its final review documents; and (c) imply or suggest incorrectly that the opinions of the Staff members involved in these communications are actually the final decisions of the agency, while no such final decision has yet been made.

5. Accordingly, I formally invoke the deliberative process privilege with respect to the documents listed in Attachment 2 to the submission of the Staff's Hearing File Index Supplement 44.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed in Accord with 10 CFR 2.304(d).
John W. Lubinski

Executed in Rockville, Maryland
this 28th day of September, 2012

September 28, 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 & 50-286-LR
)	
(Indian Point Nuclear Generating)	ASLBP No. 07-858-03-LR-BD01
Units 2 and 3))	

AFFIDAVIT OF MICHAEL J. WENTZEL

I, Michael J. Wentzel, do hereby state as follows:

1. I am employed as a Program Manager in the Division of License Renewal in the U.S. Nuclear Regulatory Commission's ("NRC") Office of Nuclear Reactor Regulation. I currently serve as a project manager for the Indian Point Nuclear Generating Units 2 and 3 license renewal application ("LRA"). Among my other duties as project manager, since June 2012, I have been responsible for compiling and producing the NRC Staff's ("Staff") hearing file and mandatory disclosures in the NRC adjudicatory proceeding for the Indian Point LRA.

2. I hereby certify that all relevant materials required to be disclosed pursuant to 10 C.F.R. § 2.336 (b) and (c) in the captioned proceeding have been disclosed, and that the disclosures are accurate and complete for documents identified as of September 24, 2012.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed in Accord with 10 CFR 2.304(d).
Michael J. Wentzel

Executed in Rockville, Maryland
this 28th day of September, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (revised), I hereby certify that copies of the foregoing Letter to the Atomic Safety and Licensing Board regarding the Indian Point Hearing File, including: Attachment 1 - Indian Point License Renewal Hearing File Index Supplement 44, Affidavit of Michael J. Wentzel, dated September 28, 2012, Attachment 2 – Indian Point License Renewal Hearing File Index Supplement 44 – Deliberative Process Privilege, and Declaration of John W. Lubinski, dated September 28, 2012, in the above-captioned proceeding have been served upon the Electronic Information Exchange, the NRC’s E-Filing System, this 28th day of September, 2012.

Signed (electronically) by

Anita Ghosh
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 415-4113
E-mail: anita.ghosh@nrc.gov
Date of signature: September 28, 2012