



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

October 21, 2012

Lawrence G. McDade, Chair
Richard E. Wardwell
Michael F. Kennedy
Administrative Judges
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Re: Indian Point Nuclear Generating Station, Unit 2 and Unit 3
Docket Nos. 50-247-LR/50-286-LR; ASLBP No. 07-858-03-LR-BD01

Dear Judges:

The State of New York respectfully submits this letter to apprise the Board of recent matters and to respond to certain questions posed by the Board over the last few days.

1. Contentions NYS-16 and NYS-17

A. Late Disclosure of Expert Work by Entergy

On Friday evening, October 12, 2012, less than one business day before the start of the scheduled evidentiary hearings in this matter, Entergy disclosed for the first time new MACCS2 computer runs and calculations related to Consolidated Contention NYS-16B. At the same time, Entergy also disclosed new analytic work on Consolidated Contention NYS-17B, as well as seven previously-undisclosed, but not new, papers or studies relating to property values.

In its March 28, 2012 pre-filed testimony and related submissions, Entergy claimed with respect to NYS-16B that its “experts performed a MACCS2 sensitivity analysis in which they increased Entergy’s 2035 population estimate for census undercount and commuters as suggested by Dr. Sheppard[,] . . . [which] did not result in the identification of any additional cost-beneficial SAMAs. . . . [and] would have no material effect on the SAMA analysis results.” Entergy’s Statement of Position Regarding Consolidated Contention NYS-16B (Severe Accident Mitigation Alternatives Analysis) (ENT000002) (“Entergy SOP”).

In its June 29, 2012 rebuttal, the State and its expert Dr. Stephen Sheppard disputed the relevance of Entergy’s purported sensitivity analysis and explained its major flaws: (1) Entergy viewed the State’s SAMA contentions—NYS-16B and NYS-12C—in isolation, but instead, should have run the MACCS2 code with both the increased population from NYS-16B and corrected inputs for the parameters at issue in NYS-12C; (2) Entergy’s MACCS2 runs only accounted for 50% of Dr. Sheppard’s commuter population instead of the full 1.2 million additional people the State argues should be added to the population estimate; and (3) Entergy’s sensitivity analysis utilized a flawed distribution for Dr. Sheppard’s population increases.

Following receipt of Entergy’s March 2012 pre-filed testimony, the State sought to ensure that Entergy had disclosed all MACCS2 data files. On April 4, 2012, the State had requested from Entergy “any additional native MACCS2-related data files for MACCS2 runs that Entergy or its experts may have completed. . . . includ[ing] data for any MACCS2 runs that are not referenced in Entergy’s filings” April 4, 2012 Letter from John Sipos to Kathryn Sutton and Paul Bessette (Attachment A). Entergy responded that there were no such additional runs. April 5, 2012 Letter from Paul Bessette to John Sipos (Attachment B) (Entergy’s response).

Just before 7:00 p.m. on Friday, October 12, 2012, Entergy disclosed what appear to be new MACCS2 runs, new calculations labeled “IP2-SENS-POP2,” and new analysis using Dr. Sheppard’s entire population figure (Entergy disclosed no new documents aimed at fixing the first flaw described by Dr. Sheppard) with respect to Contention NYS-16. Simultaneously, Entergy disclosed what appears to be a new regression analysis germane to NYS-17B, presumably conducted by Dr. George Tolley. The October 12 regression is based on a data set disclosed by the State no later than June 29, 2012, when the State submitted its rebuttal testimony. It depends upon no new data that might explain Entergy’s failure to do this work before October 12, 2012 (the date ascribed to the analysis on Entergy’s disclosure log).¹ Even though many months have passed since the State’s filings, Entergy waited until the Friday night before the hearing to attempt to cure weaknesses in its previous work. Previously in the course of this proceeding, the State’s expert prepared testimony on the computer runs and sensitivity analysis previously disclosed during the course of this proceeding, as well as on Dr. Tolley’s earlier work, *see* ENT-00044.

Given that Entergy disclosed the new expert work on the eve of the beginning of the evidentiary hearings, and the State’s attorneys and experts were in Tarrytown for much of last week preparing for and attending the hearings, the State was unable to review, confirm, or respond to these late-disclosed sets of data, pertaining to separate contentions during last week’s hearings.

During the hearing, the State informed the Board of Entergy’s late disclosures and expressed the State’s concern over this event. The State believed that Entergy’s late disclosure of expert work seriously disrupted the State’s preparation for the evidentiary hearing at a critical

¹ Based on certain data in the documents, it appears that Entergy’s analyses were performed on October 8 or 9, 2012.

juncture. The State further engaged in consultations and dialogue with Entergy over this event and made clear that the State did not acquiesce to Entergy's practice.

Following the conclusion of the first week of evidentiary hearings and the return to their home offices on October 19, the State and its experts were able to review the expert work that Entergy disclosed late on October 12.

B. State Response to Board Questions

The State provides the following response to questions posed by the Board to the State during today's conference call concerning Entergy's late disclosure:

NYS-16. With respect to the expert work disclosed by Entergy on Contention NYS-16, the State and its expert, Dr. Stephen Sheppard, are prepared to proceed with the hearing on Contention NYS-16 on Monday, October 22 (tomorrow). During his testimony, Dr. Sheppard may respond to Entergy's recently-disclosed expert work.

NYS-17. With respect to the expert work disclosed by Entergy on Contention NYS-17, the State's expert prepared a statistical analysis of Dr. Tolley's work. Dr. Sheppard prepared the analysis on Friday, October 19 (after he returned to Williamstown, MA and following classes), and the State disclosed and forwarded Dr. Sheppard's analysis to Entergy and the parties on Saturday, October 20. Following today's conference with the Board, the State submitted Dr. Sheppard's analysis to the Board and all the parties this morning. This afternoon, Entergy submitted its recently-disclosed expert work to the Board and the parties.

C. Request for Entergy Document Regarding NYS-17

The State also requests that Entergy be directed to disclose any additional relevant and non-disclosed material. Document 9422 (as identified on Entergy's disclosure log), reveals the existence of at least one related document: Sheppard_SqRt.xls, an Excel spreadsheet that Dr.

Tolley apparently created. Entergy has neither logged it nor turned it over to the State for Dr. Sheppard's review.

D. Schedule for Contention NYS-16 and NYS-17

The State's expert, Dr. Sheppard, teaches classes at Williams College on Tuesday afternoons. Should the need arise, the State's attorneys and Dr. Sheppard are prepared to continue with the evidentiary hearing into Monday evening so that Dr. Sheppard may return to Williamstown at some point on Monday night.

2. Contention NYS-37

On Thursday October 18, the State received information about an unexpected and acute health issue affecting Peter Bradford, one of the State's expert witnesses for Contention NYS-37, which could prevent his testimony on the contention, which is scheduled to be taken up by the Board this week. In turn, the State promptly informed the Board and the parties of the health issue.

Since then, the State has monitored this issue with Mr. Bradford on a daily basis and will report on his condition to the Board and the parties at the start of tomorrow's (Monday) proceedings.

During this morning's conference, the Board inquired about the State's position concerning the potential for Mr. Bradford to provide his testimony via telephone. The State is quite concerned that Mr. Bradford's testimony via telephone – while the other witnesses are present in the hearing room in Tarrytown – would prejudice the presentation of the State's evidence and would place all of the State's witnesses at a distinct disadvantage. The State's attorneys have experience with appearing via telephone in various judicial proceedings around

the country; while conference calls are used for routine scheduling conferences, they have proven to be problematic for “merits” oral arguments or fact finding evidentiary hearings.

Respectfully submitted,

Signed (electronically) by

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Attachment A



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

April 4, 2012

Via Electronic Mail

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Entergy's Mandatory Disclosures, Indian Point License Renewal, Docket
Nos. 50-247-LR and 50-286-LR (ASLBP No.07-858-03-LR-BD01)

Dear Counsel and Parties:

On April 3, 2012, counsel for Entergy transmitted (1) native MACCS2-related data files for the NYS-16B sensitivity analysis (Entergy March 28, 2012 Disclosure Log Entry # 9316), and (2) supporting native files for the NYS-16B commuter analysis (Entergy Disclosure Log Entry # 9317).

The State of New York requests any additional native MACCS2-related data files for MACCS2 runs that Entergy or its experts may have completed. Such files would include data for any MACCS2 runs that are not referenced in Entergy's filings or in the materials provided on April 3, 2012. These MACCS2 runs are not protected by any privilege or confidentiality agreement and, therefore, must be disclosed. If Entergy or its experts did not conduct any additional MACCS2 runs, please so certify.

As we require these MACCS2 files to complete the State's rebuttal testimony and revised statements of position, we appreciate your prompt attention to this matter. Please contact AAG Kathryn Liberatore or me if you have any questions or would like to discuss this further.

Sincerely,

s/

John J. Sipos
Assistant Attorney General
(518) 402-2251

cc: Sherwin E. Turk
Robert D. Snook
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Attachment B

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April 5, 2012

Via E-Mail and Regular Mail

John J. Sipos
Assistant Attorney General
State of New York
The Capitol
Albany NY 12224-0341

Re: Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3),
 Docket Nos. 50-247-LR and 50-286-LR

Dear Mr. Sipos:

This letter is in response to your April 4, 2012 letter seeking any additional MACCS2-related data files for MACCS2 runs that Entergy or its experts may have completed. As we discussed on the phone yesterday, Entergy already disclosed, on April 3, 2012, all MACCS2-related data files and supporting native data files for the NYS-16B sensitivity and commuter analyses conducted by Entergy and its experts.

As we also discussed, Entergy and its experts did not conduct or rely on any MACCS2 sensitivity analyses in connection with its testimony submitted on March 30, 2012 concerning NYS-12C. Entergy did conduct four MACCS2 sensitivity runs in November 2011, before NYS filed its testimony and expert report on NYS-12C on December 21, 2011. Because Entergy tailored its testimony to the specific issues raised by NYS in its testimony and expert report, it did not rely on the November 2011 draft MACCS2 sensitivity analyses in its testimony. Therefore, we do not believe that the associated MACCS2 data files are necessary for the completion of NYS's rebuttal testimony, as suggested in your April 4, 2012 letter. Nonetheless, in the ongoing spirit of cooperation, we will forward to New York State the native MACCS2-related data files for those analyses. By doing so, however, Entergy does not concede or address your claim that such information "must be disclosed."

Sincerely,


Paul M. Bessette

Washington Philadelphia New York Los Angeles San Francisco Miami Pittsburgh Princeton Chicago Palo Alto
Dallas Houston Harrisburg Irvine Boston Wilmington London Paris Brussels Frankfurt Beijing Tokyo

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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In re: Docket Nos. 50-247-LR and 50-286-LR

License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. October 21, 2012
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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2012, copies of the State of New York's October 21, 2012 letter were served electronically via the Electronic Information Exchange on the following recipients:

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Dated at Albany, New York
this 21st day of October 2012