

In the Matter of: Entergy Nuclear Operations, Inc.  
(Indian Point Nuclear Generating Units 2 and 3)

ASLBP #: 07-858-03-LR-BD01  
 Docket #: 05000247 | 05000286  
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 Other:

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 Withdrawn:  
 Stricken:

Morgan, Lewis & Bockius LLP  
 1111 Pennsylvania Avenue, NW  
 Washington, DC 20004  
 Tel: 202.739.3000  
 Fax: 202.739.3001  
 www.morganlewis.com

NYS000204

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**Morgan Lewis**  
 C O U N S E L O R S   A T   L A W

**Kathryn M. Sutton**  
 Partner  
 202.739.5738  
 ksutton@MorganLewis.com

**Paul M. Bessette**  
 Partner  
 202.739.5796  
 pbessette@MorganLewis.com

November 17, 2009

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

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

Dear Ms. Dean:

This is a response, on behalf of Entergy Nuclear Operations, Inc. (“Entergy”), to your letter dated October 21, 2009 seeking certain documents that New York State (“State”) claims should have been disclosed pursuant to 10 C.F.R. § 2.336(a). As an initial matter, to the extent that the State’s “concerns” suggest that Entergy has not been fully forthcoming in meeting its disclosure obligations under 10 C.F.R. § 2.336(a), Entergy strongly disagrees. Entergy has complied in good faith with its discovery obligations and already has made extensive disclosures of approximately 10,000 documents. Entergy has also been fully responsive to all of the parties’ requests, including the State’s previous requests for clarification and for documents. In that same spirit of cooperation, Entergy offers the following responses to the State’s requests.

1. Entergy objects to your request for the 1968 A.V. Smith Engineering Company report because it is irrelevant to your admitted contentions. This report was not referenced or relied upon in Entergy’s license renewal application (“LRA”). Nor was this report otherwise used in the preparation of the LRA or in the development of Entergy’s Buried Piping and Tanks Inspection Program. Although your October 21 letter references a statement in the Final Safety Analysis Report (“FSAR”), Entergy reminds the State that the FSAR is part of the current licensing basis (“CLB”) and the CLB is not subject to attack in this proceeding. LBP-08-13, 68 NRC 43, 68, 73 (2008). Furthermore, for license renewal, Entergy does not take credit for cathodic protection for buried piping

systems that contain radioactive fluids. Moreover, while not conceding that it is relevant or material to the admitted contentions, Entergy has conservatively disclosed a more recent cathodic protection field survey. *See* Mandatory Disclosure Log (“MDL”) # 8619 (IP-RPT-09-00011, “Corrosion/Cathodic Protection Field Survey and Assessment of Underground Structures at Indian Point Energy Center Unit Nos. 2 and 3 during October 2008” (Feb. 26, 2009)).

2. Entergy objects to your request for the three tapes from the 2004 remote visual inspection of the IP2 service water piping because these tapes are not relevant to any admitted contention. This inspection was performed pursuant to Entergy’s existing operational programs. Neither this inspection nor these tapes were credited or otherwise used in the development of Entergy’s Buried Piping and Tanks Inspection Program. Further, although the service water system does contain buried components and is within the scope of the Buried Piping and Tanks Inspection Program, this system does not contain radioactive fluids. Nonetheless, in the spirit of cooperation but without waiving this objection or conceding that these tapes are relevant or material to the admitted contentions, Entergy will provide you with copies of the three tapes referenced in your October 21 letter.
3. Entergy objects to your request for “All other inspections tapes for inspections of piping performed at Indian Point Units 1, 2, or 3” because this request is vague, ambiguous, overbroad, unduly burdensome, not limited in scope to a reasonable time period, and seeks information that is irrelevant to your admitted contentions, particularly as it seeks production of inspection tapes of piping that is not buried and not within the scope of the IP2 and IP3 license renewal. Notwithstanding the foregoing objections, in response to your letter, we searched for video recordings of buried component inspections at IPEC and located more than 100 additional video recordings of service water piping visual inspections. No other video recordings of buried components were located. Without waiving these objections or conceding that these tapes are relevant or material to your admitted contentions, Entergy is preparing copies of these tapes that will be produced to the State.
4. Entergy objects to your request for the “root cause analyses” described in your October 21 letter because, to the extent that they even exist, these documents are not relevant to your admitted contention.
  - (a) First, we object to your request for the root cause analysis for the “April 2007 Indian Point transformer explosion and fire” because this document is irrelevant to your admitted contentions. As we have made clear, Entergy determined that transformers are active components and are not subject to an aging management review (“AMR”) under 10 C.F.R. § 54.21. Because Entergy performed no AMR for transformers, this

document was not referenced or relied upon in Entergy's LRA. Nor was this document otherwise used in the preparation of the LRA. Nonetheless, without waiving this objection or conceding that this document is relevant or material to the admitted contentions, we are providing you with a copy of Indian Point CR IP3-2007-01834, Root Cause Analysis Report for Main Transformer #31 Failure (Apr. 26, 2007).

- (b) Second, with respect to your request for the root cause analysis for the "April 2007 Indian Point steam pipe leak and venting," no such document exists. Although a condition report was prepared for this event, Entergy previously disclosed this initial condition report, *see* MDL # 68 (CR-IP3-2007-01852 (Apr. 7, 2007)), and no subsequent root cause analysis was performed. Furthermore, as Entergy explained in response to NRC Staff Audit Item 110, the April 2007 leak occurred in piping that is non-safety-related and not within the scope of license renewal. *See* Publicly Available Log # 628 (Letter from Fred R. Dacimo, Entergy, to NRC Document Control Desk, Attachment 5 at 32 (Mar. 24, 2008)). Therefore, this condition report is not relevant to your admitted contentions.
  - (c) Third, we object to your request for the root cause analysis for the "June 2004 transformer fire at the Vermont Yankee Generating Station" because this document is irrelevant to your admitted contentions for the reasons stated in our objection to your request for the root cause analysis for the "April 2007 Indian Point transformer explosion and fire." Entergy also objects to your request for this document because it relates to a facility that is not the subject of the instant license renewal proceeding.
5. Entergy previously disclosed its corporate procedure outlining when a root cause evaluation should be conducted. *See* MDL # 8486 (EN-LI-102, Rev. 13, "Corrective Action Process (Dec. 1, 2008)). In addition, Entergy will produce a copy of EN-LI-118, Rev. 11, "Root Cause Analysis Process" (July 31, 2009), which is the Entergy corporate procedure on conducting root cause evaluations.
  6. Entergy objects to your request for "Historical documents, from the date when the construction application was filed to the present, for Indian Point Units 1, 2, and 3 to the extent that such documents are relevant to the State's contentions." This request is vague, ambiguous, overbroad, unduly burdensome, and not limited in scope to a reasonable time period. Furthermore, Entergy objects to this request to the extent that the State seeks purely "historical documents" that are not related to license renewal. We also note that Entergy previously disclosed and produced thousands of relevant documents "from the date when the construction application was filed to the present."

In addition, your October 21 letter states that “Entergy has produced only 16 documents identified as responsive to the State’s contentions from the 30-year period between 1950 and 1980” and thus, you request that Entergy “confirm that these are the only documents in Entergy’s possession from that time period that are relevant to the State’s contentions.” Entergy objects to your characterization of Entergy’s disclosures. We observe that several individual log entries include dozens of individual documents dated between 1950 and 1980. For example, MDL # 8573 alone contains 50 reports issued between 1969 and 1971. Furthermore, we object to this request as vague, overbroad, and unduly burdensome to the extent that it seeks documents that are “relevant” to the State’s contentions without providing any specificity to measure what or how particular categories of documents would be relevant to the State’s contentions. Finally, Entergy objects to this request as cumulative or duplicative to the extent that it demands documents contained in Entergy’s initial mandatory disclosures, subsequent mandatory disclosure updates, and responses to the State’s previous requests for production of documents.

Finally, Entergy objects to your October 21 letter to the extent that it suggests that our responses are somehow relevant to whether Subpart G procedures should be used in this proceeding. As the Commission recently confirmed, Subpart L procedures are the default in license renewal proceedings. *AmerGen Energy Co.* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-7, slip op. at 57 (Apr. 1, 2009). Subpart G procedures are only appropriate in license renewal proceedings if the Board “by order finds that resolution of the contention necessitates resolution of . . . issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter.” 10 C.F.R. § 2.700. Nothing in your letter or Entergy’s good faith substantial mandatory disclosure efforts to date even remotely suggests that the credibility, motive, or intent of any eyewitness will be at issue in resolving the admitted contentions.

Please call with any questions.

Sincerely,



Kathryn M. Sutton, Esq.

Paul M. Bessette, Esq.

Counsel for Entergy Nuclear Operations, Inc.

JMR/als  
Enclosures

cc: Sherwin Turk