



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

December 21, 2012

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Michael F. Kennedy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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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 Administrative Judges:

The State of New York respectfully submits this report to the Atomic Safety and Licensing Board in response to the Board's request during the Thursday, December 13, 2012 hearing in Tarrytown. At the end of the December 13 hearing, the Board and the parties discussed various scheduling and procedural issues, one of which concerned aspects of the coastal zone management regulations with respect to Entergy's application for two 20-year operating licenses for Indian Point Unit 2 and Indian Point Unit 3.¹ Representatives of the State and Entergy discussed various additional, ongoing proceedings in other fora that concern coastal zone regulations. Following those discussions, NRC Staff requested an opportunity to review the filings in the State proceeding.²

The State also wishes to inform the Board about a recent development concerning coastal zone regulation issues that came about after the conclusion of last week's hearing. On Monday, December 17, 2012, Entergy submitted to the New York State Department of State (NYSDOS) a filing that alleges that the requested licenses for Indian Point Unit 2 and Indian Point Unit 3 are

¹ See, e.g., Transcript of December 13, 2012 Hearing at 4476 to 4480 (statements of J. Sipos and W. Glew). Entergy has graciously shared a four-page excerpt of the December 13, 2012 hearing transcript with the State. The State has prepared this report based on the Board's questions that appear in that excerpt. (As of Thursday evening, December 20, 2012, the transcript of the entire December 13 hearing and scheduling conference is not yet available on the electronic hearing docket to the State.)

² Transcript December 13, 2012 at 4480 (statement of S. Turk).

consistent with coastal zone management criteria. Up to this point in time, Entergy had not submitted such a consistency certification to the State. Entergy's application to NYSDOS reserved Entergy's flexibility to argue in other fora that such a consistency certification and application were not necessary. Monday's submission to NYSDOS measures approximately 3 to 4 feet in height. It is this certification and application that Entergy has argued – in its filings to this Board – is not necessary.

Before turning to the Board's questions and for the sake of completeness, the State identifies the current proceedings or requests that touch on coastal zone issues and the Indian Point facilities and operations:

1. New York Civil Practice Law and Rules (CPLR) Article 78 Petition challenging NYSDOS habitat designation, pending in New York State Supreme Court for Albany County;
2. Request for Declaratory Ruling to NYSDOS that the Indian Point facilities are exempt from coastal zone management review;
3. Request for Declaratory Ruling to NRC ASLB that the Indian Point facilities have been subject to previous coastal zone management review;
4. Consistency Certification and Application to NYSDOS that the Indian Point facilities are consistent with coastal zone management policies.

Together with this report, the State submits a chart listing the various proceedings and upcoming deadlines.

The State now turns to the Board's questions to the State.

1. Specifically, the Board inquired whether the State contemplated requesting an extension of the January 14, 2013 date for submitting a response to Entergy's request for a declaratory ruling that the Coastal Zone Management Act was not applicable to Entergy's application for a 20 year operating licenses for Indian Point Unit 2 and Indian Point Unit 3. The State intends to request that the January 14, 2013 filing date be postponed. Representatives of the State have been in consultation with Entergy, NRC Staff, and Riverkeeper representatives on this matter over the last week and the parties have reached a consensus on March 22 as the filing date for the submission of answers to the ASLB. The State intends to file such a request asking the Board to amend the schedule by Monday, January 7, 2013. The likely bases of the request are the considerable demands placed on NYSDOS Staff in the wake of Sandy, which caused extensive damage to New York coastal communities, and the Staff resources devoted to reviewing and addressing various requests, applications, and challenges concerning the coastal zone management program presented by Entergy with respect to the Indian Point facilities.

2. The Board also inquired whether the parties contemplated filing a request to stay the declaratory ruling request pending before the Board. The State of New York does not contemplate filing such a stay request at this time.

3. The Board also inquired about which State official would issue a decision on Entergy's declaratory ruling request to the NYSDOS. The decision on that declaratory ruling request will likely be made by the NYSDOS General Counsel

Respectfully submitted,

Signed (electronically) by

John J. Sipos
Assistant Attorney General

cc: All individuals, parties, or NRC offices on the Service List

DATE OF OCCURRENCE OR UPCOMING SCHEDULE	PROCEEDING	VENUE
Monday, Dec. 17, 2012 Applicant's (Entergy) submission to State agency of applicant's certification that alleges that applicant's federal permit application is consistent with the Coastal Zone Management Act	Application for 20-year licenses to operate Indian Point power reactors	New York State Department of State (NYS DOS)
Friday, Dec. 21, 2012 State files Memorandum of Law, Answer, and Affidavits in response to Entergy's Article 78 Petition	C.P.L.R. Article 78 Proceeding (initiated by Entergy)	New York State Supreme Court for Albany County
Wednesday, Jan. 9, 2013 Potential ruling date by NYSDOS General Counsel	Request for Declaratory Order (initiated by Entergy)	New York State Department of State
Monday, Jan. 14, 2013 NRC Staff and NYS Answers to Entergy Motion for declaratory ruling	Request for Declaratory Ruling, License Renewal Application Proceeding	United States Nuclear Regulatory Commission Atomic Safety and Licensing Board
Friday, Jan. 18, 2013 Entergy files Reply Memorandum of Law	C.P.L.R. Article 78 Proceeding	New York State Supreme Court for Albany County
Friday, Jan. 25, 2013 Return date & oral argument	C.P.L.R. Article 78 Proceeding	New York State Supreme Court for Albany County

as of December 20, 2012

**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. December 21, 2012
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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2012, copies of the State of New York's December 21, 2012 Letter Report to the Atomic Safety and Licensing Board were served electronically via the Electronic Information Exchange on the following recipients:

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Signed (electronically) by

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