

May 30, 2013

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/ 50-286-LR  
 )  
(Indian Point Nuclear Generating )  
Units 2 and 3) )

NRC STAFF'S RESPONSE TO ENTERGY'S MOTION  
FOR LEAVE TO SUPPLEMENT ITS MOTION FOR DECLARATORY ORDER

INTRODUCTON

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the motion filed by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") for leave to supplement its July 30, 2012 motion for a declaratory order that it has already obtained its required Coastal Zone Management Act consistency review for license renewal of Indian Point Nuclear Generating Units 2 and 3 ("IP2" and "IP3").<sup>1</sup> For the reasons set forth below, the Staff does not oppose Entergy's Motion to Supplement.

DISCUSSION

On July 30, 2012, Entergy filed its Motion for Declaratory Order,<sup>2</sup> in which it requested that the Atomic Safety and Licensing Board ("Board") issue a declaratory order finding that New York State ("NYS" or "New York") has already reviewed the operations of IP2 and IP3 to

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<sup>1</sup> "Entergy's Motion for Leave to Supplement Its Motion for Declaratory Order that It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point Unit 2 and 3 for Renewal of the Operating Licenses" (May 20, 2013) ("Motion to Supplement").

<sup>2</sup> "Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order that It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point 2 and 3 for Renewal of the Operating Licenses" (July 30, 2012) ("Motion for Declaratory Order").

determine their consistency with the New York State Coastal Management Program, as required under the Coastal Zone Management Act of 1972 (“CZMA”), 16 U.S.C. § 1451, *et seq.* Entergy attached to its Motion for Declaratory Order a total of 29 attachments, including various documents pertaining to environmental reviews that were conducted by New York State agencies concerning the operations and/or license transfers of IP2 and IP3. In accordance with the Board’s scheduling Orders, answers in opposition to Entergy’s Motion for Declaratory Order were timely filed (a) by New York and Riverkeeper, Inc. (“Riverkeeper”), on April 5, 2013,<sup>3</sup> and (b) by the NRC Staff, on April 15, 2013.<sup>4</sup> In addition, on April 5, 2013, New York filed a Cross-Motion for Declaratory Order; answers to that motion were timely filed by Riverkeeper and the Staff on April 15, 2013, and by Entergy on May 6, 2013.

In its current Motion to Supplement, Entergy seeks leave to submit four additional documents for the Board’s consideration, concerning “New York’s previous reviews” of IP2 and IP3, which it contends (a) “help clarify the scope of the environmental review of IP2’s operations by the New York Public Service Commission (‘NYSPSC’) before the unit was transferred . . . to Entergy in 2001,” and (b) “reflect information about the context of the New York Power Authority’s (‘NYPA’) consistency review of IP3 in anticipation of the unit’s transfer from NYPA to Entergy in 2000.” Motion to Supplement at 1.

The Staff does not oppose Entergy’s request that the Board consider these additional documents in its evaluation and ruling on Entergy’s Motion for Declaratory Order. As Entergy notes (*Id.*), the Staff previously observed that “additional documentation and/or consultation with

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<sup>3</sup> See (1) “State of New York’s Response to Entergy’s Request to the Atomic Safety and Licensing Board for a Declaratory Order Concerning Coastal Zone Management Act Issues and Cross-Motion for Declaratory Order” (Apr. 5, 2013) (“New York’s Response”); and (2) “Riverkeeper Answer in Opposition to ‘Motion and Memorandum by Applicant Entergy Nuclear Operations, Inc. for Declaratory Order that It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point 2 and 3 for Renewal of the Operating Licenses’” (Apr. 5, 2013) (“Riverkeeper’s Response”).

<sup>4</sup> “NRC Staff’s Answer to Applicant’s Motion and Memorandum for Declaratory Order that It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of Indian Point 2 and 3 for Renewal of the Operating Licenses” (Apr. 15, 2013) (“Staff’s Response”).

the State would assist in understanding the meaning and effect of the documents submitted in support of Entergy's Motion and would help to resolve this issue." Staff's Response at 13. Entergy's Motion to Supplement provides additional documentation which it contends may assist the Board in resolving the complex and novel issues raised by Entergy's Motion for Declaratory Order. Accordingly, to whatever extent these four documents may shed additional light on Entergy's assertion that the State has previously reviewed the consistency of IP2/IP3 operations with the State's Coastal Management Program, the Staff does not oppose their consideration by the Board.<sup>5</sup>

Finally, the Staff notes that Entergy asserts that none of these four documents were available when it filed its Motion for Declaratory Order on July 30, 2012; that three of the documents were produced by NYPA on February 27, 2013, seven months after Entergy filed its motion; and that it received the fourth document (a Declaration by John H. Smolinsky, a former NYS official), "only recently." Motion to Supplement, at 2. While Entergy's Motion to Supplement does not establish that it submitted these documents within the 10-day period specified in 10 C.F.R. § 2.323(a) for the filing of motions, the Staff considers that the additional delay caused by Entergy's filing of these documents is insignificant, given (a) the substantial delay that has already occurred due to the parties' 8-month delay in filing responses to Entergy's Motion, (b) the State's 9-month delay in filing its Cross-Motion for Declaratory Order; (c) the fact that no party has previously argued that Entergy's Motion for Declaratory Order was itself untimely, and (d) the importance that the Board be able to consider all of the available, relevant evidence in deciding the difficult issues raised by Entergy's Motion for Declaratory Order.

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<sup>5</sup> The Staff expresses no opinion herein as to the effect of these four additional documents on Entergy's Motion for Declaratory Order. As Entergy states, if the Board grants its Motion to Supplement, the other parties (New York, Riverkeeper and the Staff) seek leave to file answers thereto on or before June 21, 2013. See Motion to Supplement at 3.

CONCLUSION

For the foregoing reasons, the Staff does not oppose Entergy's motion for leave to supplement its July 30, 2012 Motion for Declaratory Order.

Respectfully submitted

**/Signed Electronically by/**

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Dated at Rockville, Maryland  
this 30<sup>th</sup> day of May 2013

CERTIFICATION OF COUNSEL

Counsel for the Staff certifies that he has made a sincere effort to make himself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been successful.

Respectfully submitted,

**/Signed (electronically) by/**

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO ENTERGY'S MOTION FOR LEAVE TO SUPPLEMENT ITS MOTION FOR DECLARATORY ORDER," dated May 30, 2013, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 30th day of May, 2013.

**/Signed (electronically) by/**

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