

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

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In re: Docket Nos. 50-247-LR; 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. November 25, 2013
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**STATE OF NEW YORK
MOTION FOR LEAVE TO SUBMIT RECENTLY-ISSUED RULING BY
NEW YORK STATE PUBLIC SERVICE COMMISSION
AS AN ADDITIONAL EXHIBIT
CONCERNING CONTENTION NYS-37**

Office of the Attorney General
for the State of New York
The Capitol
State Street
Albany, New York 12224

The State of New York respectfully requests leave from the Atomic Safety and Licensing Board to submit the November 4, 2013 decision by the New York State Public Service Commission in Case 12-E-0503 as an exhibit in connection with Contention NYS-37. Riverkeeper and Clearwater do not oppose this motion, while Entergy and NRC Staff oppose the admission of the proposed exhibit.

Factual and Procedural Background

In the December 2010 Final Supplemental Environmental Impact Statement (NYS00133A/J) prepared for the proposed renewal of the operating licenses of the Indian Point Unit 2 and Indian Point Unit 3 facilities, NRC Staff discussed the no-action alternative (§8.2) and alternative energy sources (§8.3). In Section 8, the EIS also discussed purchased power and transmission issues (§8.3.2), energy efficiency (§8.3.3), and combinations of alternatives (§8.3.5) and cited previous PSC orders (§8.5). Among other things, the EIS discusses constraints or bottlenecks in the distribution system (§8.3.2).

In October 2012, the State presented the then-recently-issued New York State Energy Highway Blueprint (NYS00448A/B).¹ That report recommended, among other things, the upgrade/construction of transmission capabilities (*e.g.*, 12, 37-41, 110) and the development of reliability contingency plans (*e.g.*, 37, 48-49) for the potential retirement of Indian Point Unit 2 and Indian Point Unit 3.

Thereafter, on November 27, 2012 Public Service Commission announced certain initiatives to address various energy matters, including the commencement of a PSC proceeding examining the retirement of the Indian Point facilities (which subsequently was identified as Case 12-E-0503). PSC Press Release (NYS000466). During the evidentiary hearing before the NRC Atomic Safety and Licensing Board, evidence was presented concerning the Energy

¹ This report was initially identified as Exhibit BRD000007. *See* Tr. 3168:7 (Oct. 24, 2012).

Highway Blueprint and the initiation of PSC proceeding 12-E-0503. *See, e.g.*, Tr. 3264-3269 (Nov. 28, 2013); NYS00448A/B, NYS000466. The State presented this evidence in support of its argument that the EIS failed to adequately examine the no-action alternative and energy alternatives.

On November 4, 2013, the New York State Public Service Commission issued the underlying order. Order Accepting Indian Point Energy Center Reliability Contingency Plans, PSC Case 12-E-0503 (Nov. 4, 2013). Among other things, the PSC Order approved three transmission projects as well as energy efficiency, demand reduction, and combined heat and power programs. *See, e.g.*, PSC Order, at 8-12, 24, 47. The ruling identified three Transmission Owner Transmission Solution (or “TOTS”) projects which are expected to contribute at least 600MW in the Lower Hudson Valley energy zones. PSC Order, at 8, 22. The identified energy efficiency, demand reduction, and combined heat and power programs are expected to contribute 125MW of electrical demand reduction. PSC Order, at 5.²

The order and its appendix reflect that Entergy and others participated in PSC proceeding 12-E-0503. *See, e.g.*, PSC Order, at 42, 44, *id.*, at Appendix A, 7-10.

Given the nature of the PSC ruling and its apparent relevance to Staff’s EIS, the State brought it to the attention of the Board and the parties in this proceeding.³ In a subsequent filing, Entergy questioned the State’s notice of the PSC ruling and Entergy’s opportunity to respond.⁴ Following Entergy’s submission, counsel for the State spoke with Entergy’s counsel regarding these questions. After further consideration and to resolve the questions Entergy raised, the State

² The PSC recognized that an additional 60MW of energy efficiency, demand reduction, and combined heat and power projects were also underway, bringing the total to 185MW. PSC Order, at 5, 6, n.11.

³ State of New York, Response to NRC Staff Status Report, ML13317A862 (Nov. 13, 2013) (which also discussed the revised Waste Confidence schedule).

⁴ Entergy’s Reply to New York State’s Response to NRC Staff Status Report, ML13318A237 (Nov. 14, 2013).

proposed to present the PSC ruling as an exhibit in connection with Contention NYS-37. The State consulted with all parties.

Good Cause Exists to Admit the Recent PSC Order

Parties may proffer newly created, relevant documents identified as new exhibits. See Teleconference Tr. at 1220, 1245-46 (Sept. 24, 2012); *accord Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Order Denying Clearwater's Motion to Supplement the Record, at 3 (Dec. 5, 2012) (10 C.F.R. § 2.337(a) is the applicable standard for the admission of new exhibits).

Good cause exists to admit the PSC Order as an exhibit in this proceeding. The document is relevant to Contention NYS-37, Staff's EIS Chapter 8, and the examination of the no-action alternative and alternative energy sources – including energy efficiency, conservation, purchased power, and the combination of alternatives. The PSC Order identifies concrete steps that will reduce the transmission constraints discussed in NRC Staff's EIS. Such transmission upgrades will increase the ability for electricity to move into and within the Lower Hudson Valley energy zones. The order also confirms the availability of energy efficiency, demand response, and combined heat and power measures.

NRC Staff and Entergy object to the introduction of the November 4, 2013 NYS PSC Order as an exhibit in this proceeding. The State understands those objections to be based on a position that the order concerns the “need for power” and is therefore irrelevant in this proceeding. As set forth in this motion and contrary to Staff's and Entergy's position, the PSC ruling is directly relevant to the issues discussed in the Staff's EIS.

The PSC Order was issued on November 4, 2013, and, as such, it was not available to the parties in this proceeding before then. Counsel for the State in this proceeding reviewed the

order during the weekend of November 9 to 11 and promptly provided it to the parties and the Board. Thereafter, after discussions and consultations with the parties, the State promptly moved for the admission of the document.

Accordingly, the State respectfully requests that the Board admit the November 4, 2013 Order by the Public Service Commission as Exhibit NYS000481. A copy of the document – with an exhibit marker – accompanies this filing.

Respectfully submitted,

Signed (electronically) by

John J. Sipos
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(518) 402-2251

Dated: November 25, 2013

10 C.F.R. § 2.323 Certification

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 Scheduling Order (at 8-9), I certify that I have made a sincere effort to contact counsel for NRC Staff, Entergy, Riverkeeper, and Clearwater in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful with respect to NRC Staff and Entergy. Riverkeeper and Clearwater do not oppose the motion.

Signed (electronically) by

John J. Sipos
Assistant Attorney General
State of New York

dated: November 25, 2013

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2013, copies of the State of New York Motion for Leave to Submit Recently-Issued Ruling by NYS Public Service Commission as an Additional Exhibit concerning Contention NYS-37 were served electronically via the Electronic Information Exchange on the following recipients:

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Dated at Albany, New York
this 25th day of November 2013