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DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

September 9, 2015

Lawrence G. McDade, Chair  
Richard E. Wardwell, Administrative Judge  
Michael F. Kennedy, Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mailstop 3 F23  
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 Administrative Judges:

Today the State of New York and Riverkeeper, Inc. will file supplemental submissions in support of Contentions NYS-25, NYS-26B/RK-TC-1B and NYS-38/RK-TC-5. The submissions will include Exhibits NYSR00544 and NYS000563 through 000573 and Exhibits RVK000161 through 000165. The State's submissions will include both public, redacted as well as non-public, non-redacted versions of its Supplemental Pre-filed Testimony and Statements of Position.

In reviewing the August 10, 2015 submissions by Entergy, the State has noticed that Entergy did not file public, redacted versions of its Pre-filed Testimony or Statements of Position. The State believes that this across-the-board designation is contrary to the Atomic Safety and Licensing Board's 2009 Protective Order,<sup>1</sup> which provides for partial redaction of documents that contain both public (*i.e.*, non-proprietary) information as well as information that the Initial Holder asserts is proprietary. Instead of filing partially-redacted filings, Entergy has filed only proprietary versions of its testimony which, in effect, renders the entire document non-public. The State is concerned that Entergy has thus transformed information that is not protected by the Order (*i.e.*, public information) into information that is included within the scope of the Protective Order and is effectively shielded from public access and review.

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<sup>1</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), ASLB Protective Order, (Sept. 4, 2009) ML092470105.

The State submits that Entergy's across-the-board designation negatively impacts the proceeding and ultimate evidentiary hearing. First, at present, the public has no ability to review the substantial amount of public information that is contained in Entergy's testimony. Second, given the broad use of proprietary designations that encompasses non-proprietary and public information, the State is not clear how any meaningful public hearing can be held on the Track 2 contentions. Third, the consequence of such an across-the-board designation of all of Entergy's testimony as constituting proprietary information, carries over into the State's preparation of responsive submissions and – in accordance with the Protective Order – could cause an unnecessary expansion of redactions in the State's filings. Indeed, out of an abundance of caution, the State, in its filings today, has redacted information that it believes is clearly public and non-proprietary in nature, but which has been designated confidential in its entirety by Entergy in its August 10 submissions. Such an unnecessary "spill over" effect impedes the public's ability to review the State's filings.

In the hopes of resolving this issue and facilitating an open and public hearing on non-proprietary matters, the State has reached out to Entergy's counsel and asked Entergy to prepare and file redacted, public versions of its pre-filed testimony and statements. While Entergy has stated that it disagrees with the State's reading of the Protective Order, Entergy has agreed to file public, redacted versions of its testimony and statements of position by September 17, 2015. Accordingly, the State reserves the right to modify the redactions that appear in today's filings. For similar reasons, Riverkeeper reserves its right to submit public, redacted versions of its filings once Entergy makes a public submission.

In addition, the State reserves the right to supplement its testimony and positions should new documents or information be disclosed that concern conditions at the Indian Point facilities.

Respectfully submitted,

*Signed (electronically) by*

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