

**Letter from Kathryn M. Sutton and Paul M. Bessette
to Administrative Judges Lawrence G. McDade, Dr.
Michael F. Kennedy and Dr. Richard E. Wardwell
September 18, 2015**

**ATTACHMENT 16
to NYS DECLARATION**

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September 18, 2015

Lawrence G. McDade, Chairman
Dr. Michael F. Kennedy
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3), Docket Nos. 50-247-LR and 50-286-LR – Redacted Filings for Track 2 Contentions

Dear Administrative Judges:

On August 10, 2015, Entergy Nuclear Operations, Inc. (“Entergy”) filed its statements of position and pre-filed written testimony on the Track 2 safety contentions scheduled for hearing during the week of November 16, 2015. Because these documents contain proprietary information, pursuant to paragraphs A and K of the Atomic Safety and Licensing Board’s (“Board”) October 7, 2011 Order (Procedures for Evidentiary Filings) (“Protective Order”), Entergy marked these documents as proprietary and served them via the NRC’s Electronic Information Exchange upon the Board, its law clerks, the Office of the Secretary, and representatives of hearing participants that are authorized to receive such information pursuant to the Protective Order.

Three weeks later, on August 31, 2015, counsel for the State of New York contacted counsel for Entergy, stating that the Protective Order “provides for partial redaction of documents,” and accusing Entergy of “transform[ing] information that is not protected by the Order (*i.e.*, public information) into information that is included within the scope of the Protective Order.” Counsel for Entergy responded on September 3, explaining that although Entergy did not agree that the Protective Order requires redacted filings, in the ongoing spirit of cooperation, Entergy would

endeavor to prepare redacted versions of its testimony and statements of position within two weeks.

Entergy notes that the Protective Order, which the State agreed to more than six years ago, states that “All pleadings, issuances, testimony, exhibits, and correspondence in this proceeding that contain proprietary information shall be treated as confidential” It further states that “If the Initial Holder of proprietary information or its counsel has a good faith belief that a document or portion thereof contains information that qualifies” then, among other things, it shall “prominently mark with a conspicuous ‘Contains [insert owner’s name] Designated Proprietary Information’ label each proprietary document on the first page and on each other page of the document” Further, the Protective Order contains no provisions requiring redactions, but merely requires the parties to “consult and endeavor to resolve” disputes, including resolving such disputes through the use of redactions. Entergy does not concede that the issues raised by the State are a dispute under the Protective Order subject to this provision, but nevertheless agreed to prepare the redactions requested by the State.

Despite Entergy’s prior agreement to take voluntary actions to accommodate the State’s request, in a cover letter served with the State’s pre-filed rebuttal testimony, exhibits, and statements of position, counsel for the State again erroneously accused Entergy, before the Board, of transforming public information into non-public information. It further accused Entergy of undermining a “meaningful public hearing” through its allegedly “across-the-board designation” of proprietary information.

As an initial matter, Entergy believes that the State’s statements in the cover letter, again made after Entergy in good faith agreed to the State’s requests for redacted testimony, is inconsistent with the generally professional participation of the parties in this proceeding to date. Further, Entergy strongly disagrees with the State’s insinuation that, by following the requirements of the Protective Order, Entergy has inappropriately “shielded” public information from public view.

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Finally, Entergy notes that the public's ability to review any information has no impact on the Intervenor's ability to prepare for or participate in the upcoming hearing.

Respectfully submitted,

Executed in accord with 10 C.F.R. § 2.304(d)

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