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April 4, 2016

Chairman Stephen G. Burns
Commissioner Kristine L. Svinicki
Commissioner William C. Ostendorff
Commissioner Jeff Baran
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Docket: *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Unit 2), Docket No. 50-247-LA (Re: Extension of Integrated Leak Rate Test Interval by 5 Years)*

Re: **Entergy's Request to Disregard Unauthorized Filing by New York State**

Dear Chairman Burns and Commissioners Svinicki, Ostendorff, and Baran:

On April 1, 2016, New York State ("the State") filed, on the electronic docket for this proceeding, a self-described "Notice."¹ The Commission should disregard the State's eleventh-hour filing because it is procedurally unauthorized and goes beyond the bounds of a proper Notice.² It also mischaracterizes the well-documented legal and technical bases for the license amendment at issue, as set forth in Entergy's December 2014 license amendment request ("LAR") and the NRC Staff's February 2016 Safety Evaluation supporting issuance of the subject license amendment.³

The Notice identifies no statutory, regulatory, or other legal basis for its submission. And there is none. Moreover, the State's suggestion that its Notice serves to inform the Commission of a new, relevant

¹ State of New York Notice of Subsequent Event Concerning Pending Appeal of Atomic Safety and Licensing Board Decision LBP-15-26 and License Amendment for Entergy Indian Point Unit 2 to Delay the Containment Leak Rate Test for Five Years (Apr. 1, 2016) ("Notice").

² Authorized Commission and Licensing Board notifications of new material and relevant information are limited to statements of fact. *See generally Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-774, 19 NRC 1350, 1359 (1984).* They are not vehicles or opportunities for making additional arguments, as the State does here.

³ *See Letter from Lawrence Coyle, Entergy, to NRC Document Control Desk, NL-14-128, Proposed License Amendment Regarding Extending the Containment Type A Leak Rate Testing Frequency to 15 years, Indian Point Unit Number 2, Docket No. 50-247, License No. DPR-26 (Dec. 9, 2014) (ML14353A015); Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment to Facility Operating License No. DPR-26, Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2 (Feb. 23, 2016) (ML16057A552).*

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development is inconsistent with its explicit acknowledgment that the Commission *already* was aware of the information contained in the Notice.⁴ And the State's Notice, which seeks to circumvent Entergy's reliance on its duly authorized license amendment, comes only days before the Commission's scheduled issuance of a ruling on the State's pending appeal of the Board decision (LBP-15-26) denying its petition to intervene in this proceeding.⁵

Furthermore, the State's Notice rests on a mischaracterization of Entergy's LAR. The State suggests that an extension of the current outage "may be relevant" because the LAR notes, in passing, that the amendment could result in "savings in radiation exposure to personnel, cost, and critical path time during future refueling outages."⁶ However, an applicant's reasons or incentives for submitting a LAR have no bearing on the NRC's determination as to whether the requested action is technically justified and satisfies its regulatory requirements.⁷ Notably, in its original challenge to the LAR, the State similarly claimed that Entergy relied on reduced costs or outage times to justify the requested 5-year extension of the integrated leak rate test interval. The Board rejected that argument in LBP-15-26, which, as noted above, is still under Commission review.⁸

For the foregoing reasons, Entergy respectfully requests that the Commission disregard the State's Notice.

Respectfully submitted,

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

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⁴ See Notice at 1 ("The State understands that NRC Staff subsequently informed various senior assistants to the Commissioners of this development.").

⁵ Notably, prior to submitting its Notice, State counsel contacted Entergy counsel to query whether Entergy would be amenable to performing the integrated leak rate test during the current refueling outage, which is being extended in light of the recent baffle-former bolt inspection findings. Entergy counsel took the position that because the Commission's Affirmation Session concerning its ruling on the State's pending appeal of LBP-15-26 is scheduled for next Tuesday, April 5, it would be prudent to wait for that decision and any related Commission guidance. See Nuclear Regulatory Commission, NRC-2016-0001, Sunshine Act Meeting Notice, 81 Fed. Reg. 18,651 (Mar. 31, 2016).

⁶ Notice at 1 n.3 (quoting Entergy's LAR, Attachment 1, at 3).

⁷ See *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-22, 82 NRC __ (slip op. at 10) (Nov. 9, 2015) ("If the Staff determines that the licensee has satisfied our regulatory requirements, it then issues the requested license amendment."). Indeed, the Staff's detailed Safety Evaluation for the instant license amendment focuses on Entergy's compliance with the applicable safety regulations and NRC-approved guidance. Nowhere does it mention cost savings.

⁸ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Unit 2), LBP-15-26, 82 NRC __ (slip op. at 16 n.32) (Sept. 25, 2015) (appeal pending) (noting that "Entergy does not seek to justify its LAR on economic grounds").

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	Docket Nos.	50-247-LA
)		
ENTERGY NUCLEAR OPERATIONS, INC.)		
)		
(Indian Point Nuclear Generating Station, Unit 2))	April 4, 2016	
)		

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I hereby certify that, on this date, copies of “Entergy’s Request to Disregard Unauthorized Filing by New York State” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Ryan K. Lighty

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