

February 21, 2017

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

NRC STAFF'S ANSWER TO INTERVENORS' NOTICE OF WITHDRAWAL  
OF TRACK 2 CONTENTIONS AND UNOPPOSED MOTION TO  
DISMISS THOSE CONTENTIONS AND THIS PROCEEDING IN ITS ENTIRETY

In accordance with 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby submits its answer to the State of New York and Riverkeeper, Inc. (jointly, "Intervenors") Notice of Withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding in its Entirety ("Notice").<sup>1</sup> In their Notice, the Intervenors withdraw and move to dismiss their remaining track 2 contentions,<sup>2</sup> and request that the proceeding be terminated.<sup>3</sup> Because the Intervenors have withdrawn all the remaining pending contentions, there are no issues before the Atomic Safety and Licensing Board

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<sup>1</sup> See "Intervenors' Notice of Withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding in its Entirety" ("Notice") (Feb. 8, 2017) (Agency Document Access and Management System ("ADAMS") Accession No. ML17039B090). On February 15, 2017, the Atomic Safety & Licensing Board ("Board") provided interested governmental entities to this proceeding (i.e. the Town of Cortlandt, Westchester County, the State of Connecticut, the NYC Department of Environmental Protection, and the Village of Buchanan) an opportunity to submit comments related to the Notice no later than February 28, 2017. "Notice (Opportunity for Comment on Motion to Withdraw)," at 2 (Feb. 15, 2017) (unpublished) (ADAMS Accession No. ML17046A138).

<sup>2</sup> The track 2 contentions consist of Contentions NYS-25 (Reactor Vessel Internals), NYS-26B/RK-TC-1B (Metal Fatigue), and NYS-38/RK-TC-5 (Commitments) and are the only remaining contentions that remain pending for Board resolution. All other contentions were previously resolved by the Board prior to and after the track 1 hearings.

<sup>3</sup> See, e.g., Notice at 3.

(“Board”) that require adjudication. Thus, the Staff does not oppose the Intervenor’s Notice and agrees that the remaining track 2 contentions should be dismissed and the proceeding terminated.

As part of the settlement agreement and as explained in the Notice, the Intervenor and Entergy Nuclear Operations, Inc. (“Entergy”) were required to take certain actions by set dates including Entergy’s submittal of its recently filed amendment to the license renewal application (“LRA”) that among other things shortened the license renewal term to 2024 and 2025 for Indian Point Nuclear Generating Units 2 and 3 (collectively, “Indian Point”) and made changes to the reactor vessel internals aging management program.<sup>4</sup> These changes (along with other issues currently under Staff review) are being reviewed by the Staff to determine whether the LRA meets the NRC’s regulatory requirements for issuing a renewed license.

The NRC Staff expresses no opinion on the settlement agreement reached by the Intervenor and Entergy, in which the Intervenor and Entergy have settled their dispute regarding the license renewal of Indian Point and other ongoing disputes in other forums. As stated in the Intervenor’s Notice, the Staff did not participate in the settlement negotiations and is not a party to the settlement agreement.<sup>5</sup> Thus, as the Notice appears to recognize, the settlement agreement cannot impose or alter the Commission’s authority, regulatory responsibilities, or jurisdiction over Indian Point’s safe operation, licensing, inspection, enforcement, and decommissioning.<sup>6</sup> As such, nothing in the Notice, the settlement agreement, or the Staff’s non-opposition should be interpreted as altering or otherwise encumbering the full scope of the Commission’s authority over Indian Point

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<sup>4</sup> See Notice at 2 – 3. See *generally* Entergy Updated IPEC RVI Aging Management Plan (NL-17-020), Notice, Attachment 4, at 59-137 (Feb. 6, 2017) (ADAMS Accession No. ML17039B091).

<sup>5</sup> Notice at 2 n. 4.

<sup>6</sup> See *id.*

Because no party opposes the Notice and no issues are pending before the Board that require adjudication, the Staff respectfully submits that the Board should dismiss the remaining track 2 contentions and terminate the proceeding.

Respectfully submitted,

**/Signed (electronically) by/**

Brian G. Harris  
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Executed in Rockville, Maryland  
this 21st day of February 2017.

CERTIFICATION OF COUNSEL

In accordance with the Atomic Safety and Licensing Board's "Scheduling Order" of July 1, 2010 (at 8-9), I hereby certify that I have made a sincere effort to make myself available to listen and respond to New York, and to resolve the factual and legal issues raised in New York's "Intervenors' Notice of Withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding in its Entirety," and that my efforts to resolve the issues have been successful.

Executed this 21st day of February 2017.

**/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 ANSWER TO INTERVENORS' NOTICE OF WITHDRAWAL OF TRACK 2 CONTENTIONS AND UNOPPOSED MOTION TO DISMISS THOSE CONTENTIONS AND THIS PROCEEDING IN ITS ENTIRETY," dated February 21, 2017, have been served via the NRC's Electronic Information Exchange (the NRC's E-Filing System), in the above captioned proceeding, this 21st day of February 2017.

**/Signed (electronically) by/**

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