February 9, 2012

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 "STATE OF NEW YORK AND RIVERKEEPER MOTION TO COMPEL COMPLIANCE WITH DISCLOSURE OBLIGATIONS BY NRC STAFF"

Pursuant to 10 C.F.R. § 2.323(c) and (h), the staff of the U.S. Nuclear Regulatory Commission ("NRC Staff") hereby responds to the "State of New York and Riverkeeper Motion to Compel Compliance with Disclosure Obligations by NRC Staff" ("Motion") filed by the State of New York ("New York") and Riverkeeper, Inc. ("Riverkeeper") (collectively, "Intervenors"), on January 30, 2012.

The Intervenors' Motion is replete with unsupported, inflammatory allegations concerning what the Intervenors assert is the Staff's "position" or "view" regarding its document disclosure obligations in this proceeding, and the Staff's alleged attempts to avoid fulfilling its discovery obligations and to "defeat" the Intervenors' contentions; significantly, however, the Intervenors fail to provide even a single quote from any Staff statement to support these allegations.[1] The Staff respectfully submits that the Intervenors' Motion should be denied, in that the Motion:

[1] The Motion contains more than 20 assertions regarding what the Intervenors contend is the Staff's "position" or "view" of its disclosure obligations, the Staff's alleged "refusal," "reluctance" or unwillingness to comply with its discovery obligations; and the Staff's alleged "attempt to defeat" the Intervenors' contentions. *See, e.g.*, Motion at 1, 5, 6, 7, 8, 11, 13, 14, 15, 18, and 19; *see also*, "Declaration of John Sipos" (Jan. 30, 2012), at 2 ¶ 7. The sole reference made by the Intervenors to any Staff statement in support of these accusations is their citation of two letters from Sherwin E. Turk (Staff Counsel) to John J. Sipos (Counsel for New York), dated December 31, 2009 (Motion Att. 6) and December 30, 2011 (Motion Att. 4). As discussed *infra,* those letters provide no support for the Intervenors' assertions; further, the Intervenors' assertions are directly contradicted by the statements made by Staff Counsel in numerous communications with them regarding the Staff's position – none of which are cited in their Motion. *See* discussion *infra* **and Attachments 3-10** hereto.

(a) flatly misstates the Staff's clearly articulated position concerning its mandatory disclosure and hearing file obligations in this proceeding;

(b) is based upon the Intervenor's fundamental misreading of the Staff's discovery obligations under 10 C.F.R. §§ 2.336(b) and 2.1203(b) in an NRC adjudicatory proceeding;

(c) omits important information concerning the Staff's repeated efforts to resolve this motion, by offering to assist the Intervenors in obtaining the documents they seek, beyond those that the Staff is required to disclose under 10 C.F.R. §§ 2.336(b) and 2.1203(b);

(d) effectively seeks to have the Board compel the Staff to perform a broad discovery search on behalf of the Intervenors, for documents that are not required to be disclosed under 10 C.F.R. §§ 2.336(b) and 2.1203(b), thus relieving them from having to conduct that search, themselves; and

(e) is extraordinarily late, in that the Motion was filed fully three years after the Staff's extensive document disclosure efforts commenced, two years after New York first learned of the Staff's position on this issue, and on the eve of evidentiary hearings – without any effort by the Intervenors to file a motion to compel or motion for clarification of the Staff's disclosure obligations until now.

Further, as set forth in the Affidavit of Kimberly J. Green (**Attachment 1** hereto), to the best of its knowledge, information and belief, the Staff has disclosed or listed in its privilege logs, all documents in the possession and control of its employees or consultants that are required to be disclosed or identified in the Staff's hearing file and mandatory disclosures pursuant to 10 C.F.R. §§ 2.336(b) and 2.1203(b). For these reasons, as more fully set forth below, the Staff submits that the instant Motion is entirely without merit and should be denied.

BACKGROUND

I. PROCEDURAL HISTORY

This proceeding concerns the license renewal application ("LRA") submitted by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") for Indian Point Nuclear Generating Units 2 and 3 ("IP2" and "IP3") on April 23, 2007. A Notice of Opportunity for Hearing on the application was published in the Federal Register on August 1, 2007, and on November 30, 2007, New York and Riverkeeper filed their petitions for leave to intervene in the proceeding.[2] On July 31, 2008, the Board issued its decision in LBP-08-13, in which it, *inter alia*, granted New York and Riverkeeper's petitions to intervene and admitted many of their contentions.[3]

On December 18, 2008, the Board directed the parties to "provide the mandatory disclosures required under 10 C.F.R. § 2.336 as soon as possible."[4] In a telephonic prehearing conference held on January 14, 2009, the Board set January 30, 2009, as the date for initial disclosures, and stated that it "had no objections to the provisions of the Letter Agreement filed by the parties memorializing mandatory disclosure protocols agreed to by all parties."[5]

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[2] *See* "New York State Notice of Intention to Participate and Petition to Intervene" (Nov. 30, 2007); Riverkeeper, Inc.'s Request for Hearing and Petition to Intervene in the License Renewal Proceeding for the Indian Point Nuclear Power Plant" (Nov. 30, 2007).

[3] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

[4] "Memorandum and Order (Scheduling Prehearing Conference and Ruling on New York State's Motion Requesting Consideration of Additional Matters)" (Dec. 18, 2008), at 1.

[5] "Memorandum and Order (Summarizing Pre-Hearing Conference)" (Feb. 4, 2009), at 3 and n.5, *citing* "Agreement of the Parties Regarding Mandatory Discovery Disclosures" (Jan. 13, 2009); Tr. 771. The approved Document Disclosure Protocols recite the parties' agreement that their disclosures may be limited to the "final documents that they develop"; "need not include drafts (including comments on drafts, transmittals of drafts, resolution of comments on drafts, and similar documents)"; and that they "need not identify or produce any document that has been served on the other parties to this proceeding." Document Disclosure Protocols, at 1-2, ¶¶ 1, 4. Further, the parties agreed to waive the requirement for a log of documents asserted to be protected under the attorney work product and/or attorney-client privileges, and to "produce lists identifying any documents that are withheld under the executive or deliberative process privilege." *Id.* at 2, ¶ 3.

II. THE STAFF'S DOCUMENT DISCLOSURES

Consistent with the parties' approved Document Disclosure Protocols and the Board's instructions, on January 30, 2009, the Staff submitted the hearing file and its initial set of disclosures in this proceeding. Those disclosures consisted of approximately 1,174 documents; a log of 491 documents withheld under the deliberative process privilege; and a log of eight documents withheld under the privilege for proprietary/sensitive information. In the three-year period since then, the Staff provided 36 supplements to its hearing file and mandatory disclosures, as well as an initial and supplemental disclosure of groundwater-related documents, totaling approximately 1592 documents; logs of 566 documents withheld under the deliberative process privilege; and logs of 15 documents withheld under the privilege for proprietary/sensitive information.

In sum, the Staff's hearing file and mandatory disclosures, to date, identify a total of approximately 2,766 publicly-available documents, 1,057 documents withheld under the deliberative process privilege, and 23 documents withheld under the privilege for proprietary/ sensitive information.[6] Each of these disclosures was accompanied by an affidavit from the NRC Staff Project Manager or other responsible person, certifying under penalty of perjury that "all relevant materials required to be disclosed pursuant to 10 C.F.R. § 2.336(b) and (c) in the captioned proceeding have been disclosed, and that the disclosures are accurate and complete" for documents identified by the date specified in the affidavit.[7] The completeness of the Staff's

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[6] A tabulation of Staff document disclosures in the period of January 30, 2009 - January 31, 2012 is provided in **Attachment 2** hereto. Each of the documents identified in those disclosures was reviewed for relevance and privilege during the hearing file/ mandatory disclosure process; this process included the efforts of one or more technical members of the Staff, Staff managers (privilege review), and at least one (and usually two) Staff attorneys.

[7] *See, e.g.*, "Affidavit of Kimberly J. Green Concerning Mandatory Disclosure Requirement of 10 C.F.R. § 2.336(b)" (Jan. 31, 2012), attached to Letter from Sherwin E. Turk to the Board (Jan. 31, 2012) (forwarding NRC Staff Hearing File Supplement No. 36). On certain occasions, the affiants certified that the document disclosures were accurate and complete except for (a) documents pertaining to (continued. . .)

disclosures is further described and attested to in the Affidavit of Kimberly J. Green (Attachment 1).

III. THE INSTANT CONTROVERSY

On November 30, 2011, the Staff transmitted Supplement 34 to the Staff's Hearing File and Mandatory Disclosures to the board and parties.[8] Later that day, Counsel for New York transmitted a letter to Staff Counsel, inquiring about the following four documents:

Document	Date	NRC [ADAMS] Accession Number
Slides, Crevice Corrosion Pitting Corrosion IGA	8/17/2011	ML11229A050
Slides, PWSCC/LPSCC in PWRs (+Steam Generator Corrosion)	9/23/2011	ML11266A011
Slides, Buried/Underground Piping Activities Update (NRC/Industry Meeting on Buried Pipe)	10/20/2011	ML11297A002
Slides, NRC Aging Management Program Including Long Term Operation (LTO), Workshop on Challenges on the Long Term Operation, New Delhi, India	11/8/2011	ML111801154

New York inquired why these four documents were not disclosed in the Hearing File, in that the documents "confirm that the aging of such components has been discussed by NRC Staff. Indeed, Staff has apparently conversed about such issues at a November conference in India."[9]

(. . .continued)
Contention Riverkeeper EC-3/Clearwater EC-1 (Spent Fuel Pool Leaks) (the Staff's search for ancient groundwater-related documents had not yet been completed), or (b) documents that were "still being processed by the NRC Office of Information Services." *See* "Affidavit of Andrew L. Stuyvenberg Concerning Mandatory Disclosure Requirement of 10 C.F.R. § 2.336(b)" (Jan. 30, 2009) (Initial Disclosures); "Affidavit of Andrew L. Stuyvenberg Concerning Mandatory Disclosure Requirement of 10 C.F.R. § 2.336(b)" (Feb. 27, 2009) (Supplement 1); "Affidavit of Andrew L. Stuyvenberg Concerning Mandatory Disclosure Requirement of 10 C.F.R. § 2.336(b)" (March 30, 2009) (Supplement 2).

[8] Letter from Sherwin E. Turk to the Board (Nov. 30, 2011).

[9] Letter from John J. Sipos to Sherwin E. Turk (Nov. 30, 2011) (Motion Att. 2) (also provided as **Attachment 11** hereto).

By letter dated December 30, 2011, Counsel for the Staff responded to New York's inquiry, providing a detailed explanation as to why the documents were not included in the Indian Point Hearing File.[10] In particular, the Staff stated that it had reviewed the specified documents, and found that "constitute generically applicable documents that do not relate to the Indian Point [LRA] and/or were not utilized by the Staff in its review of that application." Accordingly, the Staff concluded that the documents "were not required to be identified in the Staff's hearing file/mandatory disclosures pursuant to 10 C.F.R. § 2.336(b) or 10 C.F.R. § 2.1203." *Id.* at 1. The Staff further stated as follows:

> More specifically, the first two documents cited in your letter (ML 11229A050, ML 11266A011) consist of slides prepared by Structural Integrity Associates, Inc. for presentation at an NRC Staff training course on "Corrosion and Corrosion Control in Light Water Nuclear Reactors"; the third document (ML 11297 A002) consists of slides presented by the Electric Power Research Institute (EPRI) at a meeting of NRC Staff and industry representatives in October 2011 concerning industry initiatives on buried and underground piping; the fourth document (ML 111801154) consists of slides presented by members of the NRC Office of Nuclear Regulatory Research (NRR) at a November 2011 conference in New Delhi, India. None of these documents was utilized in the Staff's review of the Indian Point LRA, and none of them pertains specifically to the Indian Point facility.

Id. at 2; emphasis added.

In addition, Staff Counsel pointed out that the documents are available to New York and members of the public through the NRC website, the NRC's Public Document Room ("PDR"), and/or the NRC's "Agencywide Documents Access and Management System" ("ADAMS"); and he noted that New York, itself, had been able to identify and review the documents in ADAMS. Further, Counsel for the Staff pointed out that New York had raised the same issue regarding other documents of a generic nature, in a letter dated October 21,

[10] Letter from Sherwin E. Turk to John J. Sipos (Dec. 30, 2011) (Motion Att. 4) (also provided as **Attachment 12** hereto).

200911– to which Staff Counsel had responded by letter of December 31, 2009.[12] As Staff Counsel noted, his previous letter had explained, in part, that the Staff's mandatory disclosure and hearing file obligations in 10 C.F.R. §§ 2.336 and 2.1203 do not require the disclosure, in each individual adjudicatory proceeding, of "documents that are not related to the licensing action at issue in the proceeding." Attachment 14, at 2.[13]

Following the Staff's transmittal of its letter of December 30, 2011, the parties engaged in a series of telephone and E-mail communications in which the parties attempted to resolve this matter; the parties' E-mail communications regarding this issue are attached hereto.[14] Significantly, as discussed below, the positions stated by Staff Counsel during those

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[11] Letter from Janice A. Dean and John J. Sipos to Sherwin Turk (Oct. 21, 2009) (Motion Att. 5) (also provided as **Attachment 13** hereto).

[12] Letter from Sherwin E. Turk to John J. Sipos and Janice A. Dean (Dec. 31, 2009) (Motion Att. 6) (also provided as **Attachment 14** hereto).

[13] Staff Counsel's letter of December 31, 2009 (Attachment 14) explained why the documents specified in New York's letter of October 21, 2009 (consisting of various exhibits that had been attached to New York's motion for summary disposition of August 28, 2009, or the Staff's answer of October 13, 2009) need not be put in the hearing file. Significantly, none of those materials was required to be included in a party's mandatory disclosures or placed in the hearing file under the Board-approved Mandatory Disclosure Protocols, which stated, "A party need not identify or produce any document that has been served on the other parties to this proceeding." Document Disclosure Protocols, at 2, ¶ 4. Apart from pointing out that the documents had been filed in the adjudicatory proceeding and were already in the Intervenors' possession, Staff Counsel explained, in part, that many of the documents were "generically applicable documents, which do not relate to the Indian Point [LRA] and/or were not utilized by the Staff in its review of that application." Attachment 14, at 1. New York did not respond to Staff Counsel's letter of December 31, 2009, and never indicated any dissatisfaction with the Staff's explanation of its position prior to raising the issue again in its letter of November 30, 2011.

[14] Attached hereto are the following documents, comprising the record of the parties' substantive E-mail communications on this matter: E-mail from Sherwin Turk to John Sipos and Phillip Musegaas (Jan. 4, 2012, 3:23 PM) (**Attachment 3**); E-mail from John J. Sipos to Sherwin Turk and Phillip Musegaas (Jan. 4, 2012, 3:30 PM) (**Attachment 4**); E-mail from Sherwin Turk to John J. Sipos (Jan. 6, 2012, 4:52 PM) (**Attachment 5**); E-mail from Sherwin Turk to John J. Sipos (Jan. 6, 2012, 6:47 PM) (**Attachment 6**); E-mail from John J. Sipos to Sherwin Turk (Jan. 25, 2012, 5:00 PM) (**Attachment 7**); E-mail from Sherwin Turk to John J. Sipos (Jan. 27, 2012, 10:44 AM) (**Attachment 8**); E-mail from John J. Sipos to Sherwin Turk (Jan. 27, 2012, 3:29 PM) (**Attachment 9**); E-mail from Sherwin Turk to John J. Sipos (Jan. 27, 2012, 3:48 PM) (**Attachment 10**).

communications – which were never discussed or disclosed in the Intervenors' Motion – bear little resemblance to the Intervenors' characterizations of the Staff's position in their Motion.

DISCUSSION

I. Applicable Legal Standards

A. Standards Governing Motions to Compel

Pursuant to 10 C.F.R. § 2.323(a), motions must be filed "no later than 10 days after the occurrence or circumstance from which the motion arises"; answers to motions must be made within 10 days thereafter, as specified in 10 C.F.R. § 2.323(c). Further, pursuant to 10 C.F.R. § 2.323(d) ("Accuracy in filing"), "[a]ll parties are obligated, in their filings before the presiding officer and the Commission, to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citations to the record. . . ." Motions to compel discovery are also addressed in 10 C.F.R. § 2.323(h), which allows the presiding officer to issue oral rulings upon such motions.

B. Standards Governing the Staff's Mandatory Disclosure and Hearing File Obligations

The Commission's regulations in 10 C.F.R. § 2.336 describe the general discovery obligations of parties in this proceeding. The regulations set out separate – and quite different – obligations for the parties, based upon the identity of the party. Specifically, "all parties, other than the NRC staff" are required to comply with the discovery obligations in 10 C.F.R. § 2.336(a), while the Staff is required to comply with the discovery obligations in 10 C.F.R. § 2.336(b). Additional requirements for the Staff are set out in 10 C.F.R. § 2.1203(b), concerning the preparation and submission of a hearing file.[15]

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[15] All parties, including the Staff, have a continuing duty to update their mandatory disclosures (and the Staff is also required to update the hearing file), on a regular basis. *See* 10 C.F.R. §§ 2.336(d) and 2.1203(c).

More specifically, section 2.336(a)(1) requires each party to the proceeding "other than the NRC staff" to disclose the following:

> (a) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding, all parties, other than the NRC staff, to any proceeding subject to this part shall, . . . without further order or request from any party, disclose and provide:
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> (1) The name and, if known, the address and telephone number of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;
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> (2)(i) A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions . . ., and
>
> (ii) A copy (for which there is no claim of privilege or protected status), or a description by category and location, of all tangible things (e.g., books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention.
>
> (iii) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, *http://www.nrc.gov*, and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing.
>
> (3) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

10 C.F.R. § 2.336(a); emphasis added.

In contrast, the Commission's regulations in 10 C.F.R. § 2.336(b) describe the mandatory disclosure obligations that are applicable to the NRC Staff. Specifically, § 2.336(b) requires the Staff to make the following disclosures:

> (b) Except for proceedings conducted under subpart J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff shall, . . . without further order or request from any party, disclose and/or provide, to the extent available (but excluding those documents for which there is a claim of privilege or protected status):
>
> (1) The application and/or applicant/licensee requests associated with the application or proposed action that is the subject of the proceeding;
>
> (2) NRC correspondence with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;
>
> (3) All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding;
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> (4) Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding; and
>
> (5) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

10 C.F.R. § 2.336(b); emphasis added.

Additionally, the regulations require the Staff in any Subpart L proceeding to prepare and submit a hearing file. In accordance with 10 C.F.R § 2.1203(b), the hearing file must contain:

> (b) The hearing file consists of the application, if any, and any amendment to the application, and, when available, any NRC environmental impact statement or assessment and any NRC report related to the proposed action, as well as any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action. Hearing file documents already available at the NRC Web site and/or the NRC Public Document Room when the hearing request/petition to intervene is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

The Commission's action in establishing these requirements, and in establishing separate disclosure requirements for the Staff as distinct from all other parties, was quite deliberate. Prior to 2004, most NRC adjudicatory proceedings were conducted as formal proceedings under Subpart G ("Rules of General Applicability"). Under those regulations, discovery was governed by the provisions of former §§ 2.740 (general provisions), 2.740a (depositions), 2.740b (interrogatories), 2.741 (document production and inspections), and 2.742 (admissions), which established formal discovery procedures for all parties. While those regulations established general provisions governing discovery, various limitations were placed on a party's ability to request discovery from the NRC Staff, as set forth in such regulations as former §§ 2.720(h) (subpoenas, interrogatories and depositions), 2.740(f)(3) (subpoenas), 2.740a(j) (depositions and interrogatories), 2.740b(a) (interrogatories), 2.741(e) (documents), and 2.744 (NRC records and documents).

In 2004, the Commission enacted a major revision of its Rules of Practice.[16] Under the revised Rules of Practice, most NRC adjudicatory proceedings are to be conducted as informal Subpart L proceedings, in which the discovery provisions of 10 C.F.R. Part 2, Subparts G and J do not apply. For Subpart L proceedings, the Commission adopted the discovery provisions set forth in 10 C.F.R. § 2.336, in addition to the hearing file requirements set forth in § 2.1203. This 2004 rulemaking was part of the Commission's continued effort to make the hearing process more efficient and effective. *See* 69 Fed. Reg. at 2,182. In particular, in an effort to adopt a more efficient and less burdensome discovery process, the Commission eliminated the formal discovery procedures that had previously applied in most proceedings (including those involving nuclear power plant license applications). Thus, addressing public comments on its proposed discovery procedures, the Commission explicitly recognized that the mandatory disclosure

[16] *See* Final Rule, "Changes to Adjudicatory Process," 69 Fed. Reg. 2,182, 2,247 (Jan. 14, 2004).

provisions in 10 C.F.R. § 2.336, in combination with the broad public access to NRC documents available under 10 C.F.R. § 2.390, establish sufficient discovery opportunities in most cases:

> The Commission believes that public access to NRC documents afforded by § 2.390, mandatory disclosure for parties other than the NRC staff, and maintenance of either a hearing file or an electronic docket, will be sufficient in most proceedings to provide a party with adequate information to prepare its position and presentations at hearing (whether in written or oral form) . . . . [T]he vast majority of NRC proceedings concern licensing applications or enforcement actions. All documentation between the NRC and the applicant/subject of the enforcement action with respect to the licensing application or enforcement action is public (unless protected from public disclosure, *see* § 2.390), and will be placed into the hearing file or electronic docket. In addition, as discussed later, the NRC staff often holds public meetings where an application is discussed. In these circumstances, there is little or no need for the broad range of additional discovery permitted under Subpart G. Accordingly, the Commission concludes that the public access to documents afforded by § 2.390, the mandatory disclosures required by § 2.336, and the requirements for the NRC staff to maintain either a hearing file under §§ 2.336(b) and 2.1203 . . . are sufficient discovery in most NRC adjudications.

Id. at 2,195; emphasis added.[17]

C. The Motion Is Lacking in Merit.

1. The Staff's Hearing File and Mandatory Disclosures in This Proceeding Have Been Consistent With the Commission's Regulatory Requirements

As discussed above, the Commission's regulations in 10 C.F.R. § 2.336(a)-(b) define separate – and quite different – obligations for parties in an NRC adjudicatory proceeding, based upon the identity of the party. Specifically, "all parties, other than the NRC staff" are

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[17] Similarly, the Commission observed:

> Section 2.336 generally imposes a disclosure requirement on all parties except the NRC staff, whose disclosure obligations are addressed in 2.336(b)) in all proceedings under Part 2, except for proceedings using the procedures of Subparts G and J. This generally applicable discovery provision requires each party to disclose and/or provide the identity of witnesses and copies of the analysis or other authority upon which that person bases his or her opinion. . . . Section 2.336(b) sets forth the disclosure obligations of the NRC staff, regardless of whether it is a party. The discovery required by § 2.336 constitutes the totality of the discovery that may be obtained in informal proceedings.

69 Fed. Reg. at 2,195; emphasis added.

required to comply with the discovery obligations in 10 C.F.R. § 2.336(a), while "the NRC staff" is required to comply with the discovery obligations in 10 C.F.R. § 2.336(b). Additional requirements for the Staff are set out in 10 C.F.R. § 2.1203(b), concerning the preparation and submission of a hearing file.

Consistent with these requirements, the Staff has expended considerable effort, time and resources over the past three years, to comply with its discovery and hearing file obligations. As stated in the Affidavit of Kimberly J. Green (Attachment 1 hereto), for each of the Staff's initial and supplemental mandatory disclosures and hearing file submittals, an NRC project manager (either Ms. Green or her predecessor, Andrew L. Stuyvenberg) compiled the Staff's mandatory disclosures and hearing file submissions, and certified, under penalty of perjury, that to the best of their information, knowledge and belief, "all relevant materials required to be disclosed pursuant to 10 C.F.R. § 2.336 (b) and (c) in the captioned proceeding had been disclosed, and that the disclosures were accurate and complete for documents identified as of the date stated" in their affidavits (except as noted therein). *Id.* at 2.

In their Motion, the Intervenors repeatedly assert that the Staff has failed to adhere to its mandatory disclosure obligations in this proceeding. In particular, the Intervenors state that they "understand the Staff's position to be that (1) Staff need not disclose documents that are relevant to admitted contentions even though Staff has elected to become a party and oppose the contentions." Motion at 1. This statement does not reflect the Staff's position.

As stated in Ms. Green's Affidavit (Attachment 1 hereto), the Staff's initial and supplemental mandatory disclosures included "all documents that are required to be disclosed or identified as privileged in 10 C.F.R. §§ 2.336(b) and 2.1203(b). Specifically, the Staff's disclosures included:

> "All documents including documents that provide support for or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding," as required by 10 C.F.R. § 2.336(b)(3). In performing its document disclosure obligations, the Staff does not distinguish between documents that may pertain to admitted contentions and documents that do not pertain to those contentions. Thus, to the extent that § 2.336(b)(3) requires the disclosure of documents that may pertain to an admitted contention, those documents are and have been disclosed and placed in the hearing file.

Id. at 2 ¶ 3; emphasis added. Moreover, the undersigned Staff Counsel explicitly informed Counsel for the Intervenors of this position in his E-mail of January 4, 2012 (Attachment 3):

> As I stated during the prehearing conference on December 6, 2011, the Staff has been disclosing documents related to the Indian Point license renewal application, including documents that may relate to Contention NYS-38/RK-RC-5[sic], on a routine basis, regardless of whether they relate to an admitted contention (Tr. 991-92).

Attachment 3 at [unnumbered] 1.

Disregarding these Staff assurances, the Intervenors argue that the Staff's disclosure practices – which rest upon the explicit disclosure obligations prescribed for the Staff in 10 C.F.R. § 2.336(b)(3) – have somehow been inadequate. According to their interpretation of the Staff position, the Staff is withholding documents that fall into two categories (Motion at 6-7):

> NRC Staff views its disclosure obligation as limited to documents supporting Staff's review of the application itself. This view excludes from Staff's ongoing monthly disclosure two categories of documents that it is required by NRC Regulations to disclose:
>
> 1. documents related to admitted contentions that were not examined as part of the Staff's review of the application itself, but have been used, or reviewed, or generated as part of the Staff's response to the admitted contentions;
> 2. documents that are used, reviewed, or generated by contractors (e.g, SNL, ISL, PNNL, or Idaho National Laboratories (INL)) working for NRC Staff as part of their review of the application or as part of their review and response to admitted contentions.

The Intervenors' assertions are baseless. First, the Staff's disclosure obligations are mandated by the Commission's regulations in 10 C.F.R. § 2.336(b). That regulation establishes the very requirement that the Intervenors assert is inadequate. Thus, notwithstanding the fact that the Applicant and Intervenors are required by § 2.336(a) to identify persons upon whom rely, their reports, and other specified types of documents, that regulation explicitly exempts the Staff from those requirements. Rather, the Staff's requirements are set out in § 2.336(b); in particular, as pertinent here, § 2.336(b) requires the Staff to disclose § 2.336(a) requires the Staff to disclose "[a]ll documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding." As stated in Ms. Green's Affidavit, and all prior Affidavits certifying to the completeness of the Staff's disclosures, the Staff has made its disclosures in accordance with this regulatory requirement.

Second, there is no basis for the Intervenors' assertions that the two types of documents specified in their Motion should have been, but were not, included in the Staff's disclosures.[18] In this regard, unless a document "support[s] the NRC staff's review of the application" ("including documents that provide support for, or opposition to, the application or proposed action"), § 2.336(b) does not require that the document be disclosed.

Third, the Staff's disclosure obligations are quite broad; unlike other parties, who are required to produce documents related solely to the contentions, the Staff is required to produce all documents that support its review of the application. In practice, this results in the disclosure of thousands of documents, related to an enormous number of issues, as generally described in

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[18] Reiterating, these categories are (1) "documents related to admitted contentions that were not examined as part of the Staff's review of the application itself, but have been used, or reviewed, or generated as part of the Staff's response to the admitted contentions," and (2) "documents that are used, reviewed, or generated by contractors . . . working for NRC Staff as part of their review of the application or as part of their review and response to admitted contentions."

the Staff's SER and FSEIS. Consistent with its obligations, the Staff discloses and places in the hearing file all such documents, without attempting to parse out the numerous documents that do not relate to admitted contentions.[19] This is consistent with the disclosure requirements applicable to the NRC Staff, as recently confirmed by Commission statements in the Proposed Rulemaking. *See* 76 Fed. Reg. at 10791.

Fourth, the Commission's requirements for document disclosures by the Staff are only one part of the agency's broad array of discovery techniques available to the Intervenors. As the Commission stated in adopting its 2004 revisions to the NRC's Rules of Practice, the Staff's required disclosures are only one of many available means for parties to obtain discovery; as the Commission stated, the array of discovery techniques provided by "public access to NRC documents afforded by § 2.390, mandatory disclosure for parties other than the NRC staff, and maintenance of either a hearing file or an electronic docket, will be sufficient in most proceedings to provide a party with adequate information to prepare its position and presentations at hearing." 69 Fed. Reg. at 2,195.

Fifth, there is no basis for the Intervenors' complaint that the Staff has not disclosed documents that "have been used, or reviewed, or generated as part of the Staff's response to

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[19] The Commission has undertaken to reevaluate the Staff's broad disclosure obligations in a proposed rulemaking proceeding – in which it has solicited public comment on "whether it should revise the § 2.336 mandatory disclosures to focus the staff's disclosure obligations under § 2.336(b)(3) on documents related to the parties' admitted contentions." Proposed Rule, "Amendments to Adjudicatory Process Rules and Related Requirements," 76 Fed. Reg. 10,781, 10,790 (Feb. 28, 2011). The Commission observed that "under [current] § 2.336(b)(3) the NRC staff must disclose all documents supporting the staff's review of the application or proposed action that is the subject of the proceeding without regard to whether the documents are relevant to the admitted contentions." *Id.* The Commission indicated that it is considering a revision to 10 C.F.R. § 2.336(b)(3), to "reduce" the number of documents disclosed by the Staff; the proposed revision would require the Staff to disclose "[a]ll documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that are relevant to the contentions that have been admitted into the proceeding." *Id.* The Intervenors take note of this development in their Motion, but argue (erroneously) that the Proposed Rulemaking and the General Counsel's discussion of that rulemaking in SECY-12-004 (Motion Att. 7) somehow support their position. *See* Motion at 9-11. The Intervenors' arguments regarding those matters are convoluted, at best, and are inconsistent with the explicit language of those documents.

the admitted contentions." Documents "supporting the Staff's review of the application" are placed in the hearing file, as required by § 2.336(b)(3); other documents need not be disclosed under the regulation. Moreover, any other documents that may "have been used, or reviewed, or generated as part of the Staff's response to the admitted contentions" would have been disclosed or attached to the Intervenors' or Staff's pleadings – and the approved Document Disclosure Protocols (at 2, ¶ 4) in this proceeding explicitly exclude such documents from the parties' required disclosures.

Sixth, any "documents that are used, reviewed, or generated by contractors (e.g., SNL, ISL, PNNL, or Idaho National Laboratories (INL)) working for NRC Staff as part of their review of the application" (Motion at 19), are disclosed as part of the Staff's disclosures, in that the Staff does not exempt consultants who assist the Staff in its review of the application from the Staff's disclosure requirements. There is no basis for Intervenors' assertion to the contrary.

Seventh, "documents that are used, reviewed, or generated by contractors . . . as part of their review and response to admitted contentions" (*Id.*) are treated no differently from documents used by the Staff in reviewing and responding to admitted contentions (*see* discussion *supra*). Thus, if the documents support the Staff's review of the application, they are included in the hearing file, as required by § 2.336(b)(3); non-qualifying documents that were "used, reviewed, or generated" in reviewing or responding to a contention need not be disclosed under the regulation, and in any event would have been disclosed or attached to the Intervenors' or Staff's pleadings or exempt from disclosure under the approved Document Disclosure Protocols (at 2, ¶ 4).

Finally, the Intervenors fail to advise the Board that the Staff has repeatedly attempted to assist them to obtain the discovery they contend has been withheld. After first learning of the Intervenors' concerns, the Staff undertook to review its document disclosures, and added five

documents to the hearing file "in case they are not there already."[20] Further, Staff Counsel provided guidance to Counsel for New York in conducting ADAMS searches, and offered on several occasions to assist the Intervenors in conducting ADAMS searches for documents that may not be in the hearing file hereto[21] -- which assistance, Counsel for New York acknowledged had been helpful.[22] Moreover, Staff Counsel offered on several occasions to accept a limited, specific document request from the Intervenors[23] – an offer which the Intervenors simply ignored.[24]

In sum, the Staff respectfully submits that the Intervenors' Motion is based upon an incorrect reading of the Commission's mandatory disclosure obligations, misstates the Staff's position regarding its discovery obligations, and fails to acknowledge the Staff's repeated efforts to assist the Intervenors in obtaining the documents they seek to discover. The Motion is without basis and should be denied.

D. The Motion Is Inexcusably Late.

As set forth above and in the Affidavit of Kimberly J. Green (Attachment 1), the Staff has diligently performed its discovery obligations in this proceeding for the past three years. In that time, the Staff has adhered to the mandatory disclosure obligations prescribed in 10 C.F.R. § 2.336(b) and the hearing file obligations prescribed in 10 C.F.R. § 2.1203(b). At no time until now – when hearings are nearly scheduled to commence, the State has submitted its testimony, exhibits and statements of position, and the Staff is intensively engaged in preparing its own testimony, exhibits and statements of position – have the Intervenors ever sought to file a

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[20] *See* Attachment 5, at 1-2.

[21] *See* Attachment 5 at 2; Attachment 6; Attachment 7; Attachment 8, at 3;

[22] *See* Attachment 7.

[23] *See* Attachment 6; Attachment 8 at 3.

[24] *See* Attachment 7 (*passim*) Attachment 9 (*passim*); Attachment 10.

motion seeking to obtain a Board ruling or opinion on the scope of the Staff's discovery obligations in this proceeding.[25]

Moreover, this is not the first time that the Intervenors thought of expressing a concern over the Staff's disclosures: Fully two years ago, New York raised a closely related concern to the Staff regarding its disclosures in the proceeding, to which Staff Counsel duly responded – and New York then dropped the issue without ever indicating that it was dissatisfied with the Staff's stated view of its disclosure obligations until now.[26] New York's failure to raise this issue until now contravenes the Commission's explicit requirement, set forth in 10 C.F.R. § 2.323(a), that motions must be filed "no later than 10 days after the occurrence or circumstance from which the motion arises."

In accordance with 10 C.F.R. § 2.323(a), and in the interest of assuring fairness to all parties (including the Staff), the Motion should be denied as inexcusably late.

CONCLUSION

For the reasons set forth above and in the Affidavit and documents submitted herewith, the Staff respectfully submits that (a) it has fully complied with its obligations under 10 C.F.R. §§ 2.336(b) and 2.1203(b) to disclose, or identify as privileged, the documents sought by the

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[25] Given the Staff's need to finalize its anticipated evidentiary filings, any additional document disclosure efforts by the Staff at this time would likely interfere with its other hearing obligations.

[26] *See* Attachments 13 and 14 hereto.

State in its motion to compel, and (b) the Motion is entirely without merit and inexcusably late, and should therefore be denied.

Respectfully submitted,

/Signed (electronically) by/

Sherwin E. Turk
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Dated at Rockville, Maryland
this 9th day of February 2012

CERTIFICATION OF COUNSEL

In accordance with the Board's Scheduling Order of July 1, 2010 (at 8-9), and 10 C.F.R. § 2.323(b), the undersigned Counsel hereby certifies that he has made a sincere effort to make himself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been unsuccessful.

Respectfully submitted,

/Signed (electronically) by/

Sherwin E. Turk
Counsel for the NRC Staff
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Washington, DC 20555-0001
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E-mail: Sherwin.Turk@nrc.gov

Dated at Rockville, Maryland
this 9th day of February 2012

Attachment 1

February 9, 2012

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 & 50-286-LR
	)	
	)	ASLBP No. 07-858-03-LR-BD01
(Indian Point Nuclear Generating Units 2 and 3)	)	

AFFIDAVIT OF KIMBERLY J. GREEN

I, Kimberly J. Green, do hereby state as follows:

1. I am employed as a Senior Mechanical Engineer in the Division of License Renewal in the U.S. Nuclear Regulatory Commission's ("NRC") Office of Nuclear Reactor Regulation. I currently serve as a project manager for the Indian Point Nuclear Generating Units 2 and 3 ("Indian Point Units 2 and 3") license renewal application ("LRA"). Among my other duties as project manager, since October 2011, I have been responsible for compiling and producing the NRC Staff's ("Staff") hearing file and mandatory disclosures in the NRC adjudicatory proceeding for the Indian Point Units 2 and 3 LRA.

2. During the period from the commencement of the Indian Point LRA proceeding until October 2011, the responsibility for compiling and producing the Staff's hearing file and mandatory disclosures for the Indian Point Units 2 and 3 LRA proceeding was assigned to and performed by my predecessor, Andrew L. Stuyvenberg.

3. For each of the Staff's initial and supplemental mandatory disclosures and hearing file submittals, either Mr. Stuyvenberg or I executed an Affidavit, under penalty of perjury, certifying that to the best of our information, knowledge and belief, all relevant materials

required to be disclosed pursuant to 10 C.F.R. § 2.336 (b) and (c) in the captioned proceeding had been disclosed, and that the disclosures were accurate and complete for documents identified as the date stated in that Affidavit (except, on certain occasions, as specifically stated therein).

3. Based upon my own knowledge and my communications with Mr. Stuyvenberg regarding this matter, I am satisfied that the Staff's hearing file and mandatory disclosures include all documents that are required to be disclosed or identified as privileged in 10 C.F.R. §§ 2.336(b) and 2.1203(b), including "[a]ll documents (including documents that provide support for or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding," as required by 10 C.F.R. § 2.336(b)(3). In performing its document disclosure obligations, the Staff does not distinguish between documents that may pertain to admitted contentions and documents that do not pertain to those contentions. Thus, to the extent that § 2.336(b)(3) requires the disclosure of documents that may pertain to an admitted contention, those documents are and have been disclosed by the Staff.

4. In preparation for the Staff's filing of its Answer to the "State of New York and Riverkeeper Motion to Compel Compliance with Disclosure Obligations by NRC Staff" (Jan. 30, 2012), I conducted several searches the NRC's internal Agencywide Document Access and Management System ("ADAMS") for the Indian Point Units 2 and 3 ("IP2" and "IP3") LRA proceeding, for documents related to Contention NYS-38/RK-TC-5. Specifically, I conducted the following four searches, for each of the IP2 and IP3 dockets, for the time period of April 1, 2007 to February 7, 2012:

a. A search of the text for the word "WESTEMS";

b. A search of the text for the words "reactor vessel internal";

c. A search of the text for the words "divider plate"; and

d. A search of the text for the words "metal fatigue."

5. As set forth in Appendices 1 - 8, attached hereto, my searches disclosed a large number of documents that have been placed in the hearing file for this proceeding. Appendices 1 – 8 identify the documents found in each of my searches that were placed in the hearing file or identified as privileged, their respective dates, and their public or non-public status.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Kimberly J. Green

Executed in Rockville, Maryland
this 9th day of February, 2012

Appendix 1

ADAMS Search Results

Search Criteria: DKT=05000247, Contents contains "WESTEMS", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML110970628	4/7/2011	05000247 05000286	Non-Publicly Available	2011/04/07 Indian Point LR Hearing - SER Input Concurrence - Indian Point	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 27/Deliberative Process
ML11236A321	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11236A337	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing - FW:	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process

Appendix 2

ADAMS Search Results

Search Criteria: DKT=05000286, Contents contains "WESTEMS", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML110970628	4/7/2011	05000247 05000286	Non-Publicly Available	2011/04/07 Indian Point LR Hearing - SER Input Concurrence - Indian Point	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 27/Deliberative Process
ML11236A321	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11236A337	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing - FW:	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process

Appendix 3

ADAMS Search Results

Search Criteria: DKT=05000247, Contents contains "Reactor Vessel Internal", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML072630510	9/20/2007	05000247 05000286	Non-Publicly Available	Request for Additional Information Related to Indian Point Energy Center Units 2 and 3 License Renewal Application (TAC NOS. MD5407 and MD5408).	/NRR/NRR-DCI/CVIB /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /NRR/NRR-DLR/Branch Folders/KGreen/Indian Point
ML072830682	9/19/2007	05000247 05000286	Publicly Available	Transcript of the Indian Point License Renewal Public Meeting : Afternoon Session, Meeting, September 19, 2007, Pages 1-105.	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate /Recent Released Documents/October 2007/October 15, 2007
ML073511764	10/9/2007	05000247 05000286	Non-Publicly Available	2007/10/09 Indian Point LR Hearing - Re: IP2 and 3 SAMA RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML073511773	10/4/2007	05000247 05000286	Non-Publicly Available	2007/10/04 Indian Point LR Hearing - IP2 and 3 SAMA RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures

ML073511857	11/12/2007	05000247 05000286	Non-Publicly Available	2007/11/12 Indian Point LR Hearing - Information for conference call tomorrow	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML080090540	1/2/2008	05000247 05000286	Non-Publicly Available	2008/01/02 Indian Point LR Hearing - Fwd: Indian Point	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML080230647	1/22/2008	05000247 05000286	Publicly Available	2008/01/22 Indian Point LR Hearing - Indian Point License Renewal - NRC Staff Response to PHASE / FUSE Petitions	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Adjudicatory Files /Recent Released Documents/July 2008/July 07, 2008
ML080230649	1/22/2008	05000247 05000286	Publicly Available	2008/01/22 Indian Point LR Hearing - Indian Point Liceinse Renewal - NRC Staff Response to Seven Petitions	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Adjudicatory Files /Recent Released Documents/July 2008/July 07, 2008

ML081830867	4/22/2008	05000247 05000286	Non-Publicly Available	2008/04/22 Indian Point LR Hearing - RE: LRA SER Input for IP-2 and IP-3	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML081970301	6/13/2008	05000247 05000286	Non-Publicly Available	2008/06/13 Indian Point LR Hearing - suggested mods to draft SER per your comments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML081970303	6/12/2008	05000247 05000286	Non-Publicly Available	2008/06/12 Indian Point LR Hearing - IP SAMA-Draft SER Rev 0.doc	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML081970305	6/11/2008	05000247 05000286	Non-Publicly Available	2008/06/11 Indian Point LR Hearing - IP SAMA-Draft SER Rev 0.doc	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML081970307	6/5/2008	05000247 05000286	Non-Publicly Available	2008/06/05 Indian Point LR Hearing - IP Draft SAMA SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures

ML082040355	7/21/2008	05000247 05000286	Non-Publicly Available	2008/07/21 Indian Point LR Hearing - FW: Audit Report	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082530023	7/24/2008	05000247 05000286	Non-Publicly Available	2008/07/24 Indian Point LR Hearing - IP SAMA SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML082530356	7/15/2008	05000247 05000286	Non-Publicly Available	2008/07/15 Indian Point LR Hearing - RE: Updated SER information	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082530359	9/19/2007	05000247 05000286	Non-Publicly Available	2007/09/19 Indian Point LR Hearing - Indian Point License Renewal RAIs for RV Surveillance Program and RV Embrittlement YLAAs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML090580187	7/10/2007	05000247 05000286	Non-Publicly Available	Briefing for Sam Collins on Indian Point Site Visit, July 10, 2007.	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Disclosures re GW issues/Supplement 1 GW Disclosures/Deliberative Process /ADAMS Security Editor/Jeryll

Appendix 4

ADAMS Search Results

Search Criteria: DKT=05000286, Contents contains "Reactor Vessel Internal", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML072630510	9/20/2007	05000247 05000286	Non-Publicly Available	Request for Additional Information Related to Indian Point Energy Center Units 2 and 3 License Renewal Application (TAC NOS. MD5407 and MD5408).	/NRR/NRR-DCI/CVIB /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /NRR/NRR-DLR/Branch Folders/KGreen/Indian Point
ML072830682	9/19/2007	05000247 05000286	Publicly Available	Transcript of the Indian Point License Renewal Public Meeting : Afternoon Session, Meeting, September 19, 2007, Pages 1-105.	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate /Recent Released Documents/October 2007/October 15, 2007
ML073130534	11/9/2007	05000247 05000286	Non-Publicly Available	RAI for Section 2.4, "Scoping & Screening: Structures," Indian Point Energy Center, Units 2 and 3, License Renewal Application (TAC Nos. MD5407 and MD5408).	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /NRR/NRR-DE/EMCB /NRR/NRR-DLR/Branch Folders/KGreen/Indian Point
ML073510199	9/17/2007	05000247 05000286	Non-Publicly Available	2007/09/17 Indian Point LR Hearing - IP2/3 SAMA Draft RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures

ML073511764	10/9/2007	05000247 05000286	Non-Publicly Available	2007/10/09 Indian Point LR Hearing - Re: IP2 and 3 SAMA RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML073511773	10/4/2007	05000247 05000286	Non-Publicly Available	2007/10/04 Indian Point LR Hearing - IP2 and 3 SAMA RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/In Camera Review/Initial Disclosures
ML073511857	11/12/2007	05000247 05000286	Non-Publicly Available	2007/11/12 Indian Point LR Hearing - Information for conference call tomorrow	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082530356	7/15/2008	05000247 05000286	Non-Publicly Available	2008/07/15 Indian Point LR Hearing - RE: Updated SER information	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082530359	9/19/2007	05000247 05000286	Non-Publicly Available	2007/09/19 Indian Point LR Hearing - Indian Point License Renewal RAIs for RV Surveillance Program and RV Embrittlement YLAAs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process

ML082630689	9/12/2008	05000247 05000286	Non-Publicly Available	2008/09/12 Indian Point LR Hearing - IP LRA - Peer review of Structural Open Items related to Audit Questions 27, 358 thru 361	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082630693	9/11/2008	05000247 05000286	Non-Publicly Available	2008/09/11 Indian Point LR Hearing - Indian Point LRA draft SER input disposition of the original 5 (now 3) Open Items	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082630696	11/9/2007	05000247 05000286	Non-Publicly Available	2007/11/09 Indian Point LR Hearing - RAIs for Indian Point LRA (MD5407 & MD5408) - Electronic file	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082630710	7/15/2008	05000247 05000286	Non-Publicly Available	2008/07/15 Indian Point LR Hearing - RE: Updated SER information	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082630729	1/14/2008	05000247 05000286	Non-Publicly Available	2008/01/14 Indian Point LR Hearing - Status of RAIs from Conf. Call: IP-2 & 3 LRA - Section 2.4 "Scoping & Screening of Structures"	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process

ML082630826	9/5/2008	05000247 05000286	Non-Publicly Available	2008/09/05 Indian Point LR Hearing - 3.0.3.3.4 Rewrite with OIs B.18-1 and B.1.18-2. - the input revised in the input to be a plant specific AMP writeup	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082660237	12/3/2007	05000247 05000286	Non-Publicly Available	2007/12/03 Indian Point LR Hearing - IP 2 and 3 LRA Scoping and Screening RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082670378	4/29/2008	05000247 05000286	Non-Publicly Available	2008/04/29 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082670435	2/15/2008	05000247 05000286	Non-Publicly Available	2008/02/15 Indian Point LR Hearing - TLAA - New Summary Description,	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082670439	2/15/2008	05000247 05000286	Non-Publicly Available	2008/02/15 Indian Point LR Hearing - Re: AMR	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process

ML082670979	6/26/2008	05000247 05000286	Non-Publicly Available	2008/06/26 Indian Point LR Hearing - Chapter 5 and Appendix G, some references	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082671006	7/3/2008	05000247 05000286	Non-Publicly Available	2008/07/03 Indian Point LR Hearing - Indian Point Chapters	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082671009	7/14/2008	05000247 05000286	Non-Publicly Available	2008/07/14 Indian Point LR Hearing - App G for your files	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082890129	10/1/2007	05000247 05000286	Publicly Available	2007/10/01 Indian Point LR Hearing - Tentative Schedule for Scoping and Screening Methodology Audit	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate /Recent Released Documents/November 2008/November 25, 2008
ML12017A022	7/12/2011	05000247 05000286	Non-Publicly Available	2011/07/12 Indian Point LR Hearing - FW: New Contentions Admitted in Indian Point License Renewal Proceeding	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process

ML12017A112	1/12/2012	05000247 05000286	Publicly Available	2012/01/12 Indian Point LR Hearing - RE: Indian Point Internals	/Recent Released Documents/February 2012/February 01, 2012 /STAFF HEARING FILES - STAGED/Indian_PT_2&3_50-247&50-286-LR/Indian PT Hearing File/Update 36
ML12017A116	1/12/2012	05000247 05000286	Publicly Available	2012/01/12 Indian Point LR Hearing - RE: Indian Point Internals	/Recent Released Documents/February 2012/February 01, 2012 /STAFF HEARING FILES - STAGED/Indian_PT_2&3_50-247&50-286-LR/Indian PT Hearing File/Update 36
ML12018A256	10/25/2011	05000247 05000286	Non-Publicly Available	2011/10/25 Indian Point LR Hearing - FW: Indian Point 2 and 3 Reactor Vessel Internals Inspection Plan	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12018A257	10/25/2011	05000247 05000286	Non-Publicly Available	2011/10/25 Indian Point LR Hearing - Indian Point 2 and 3 Reactor Vessel Internals Inspection Plan	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process

ML12018A261	7/27/2011	05000247 05000286	Non-Publicly Available	2011/07/27 Indian Point LR Hearing - RE: Indian Point 2 and 3 LRA Amendment 9 RVI Program	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12018A262	7/22/2011	05000247 05000286	Non-Publicly Available	2011/07/22 Indian Point LR Hearing - RE: Oconee Internals Program High Level RAI Question	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12018A437	1/18/2012	05000247 05000286	Non-Publicly Available	2012/01/18 Indian Point LR Hearing - Indian Point Teleconference summary	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12019A385	1/19/2012	05000247 05000286	Non-Publicly Available	2012/01/19 Indian Point LR Hearing - RE: Indian Point Teleconference summary	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12020A038	1/20/2012	05000247 05000286	Non-Publicly Available	2012/01/20 Indian Point LR Hearing - RE: Indian Point Teleconference summary	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process

ML12020A048	1/20/2012	05000247 05000286	Non-Publicly Available	2012/01/20 Indian Point LR Hearing - Call summary from 1/12/12 call with Entergy	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12020A081	1/20/2012	05000247 05000286	Publicly Available	2012/01/20 Indian Point LR Hearing - Teleconference summary from call held January 12, 2012 RE Indian Point License Renewal Application	/Recent Released Documents/February 2012/February 01, 2012 /STAFF HEARING FILES - STAGED/Indian_PT_2&3_50-247&50-286-LR/Indian PT Hearing File/Update 36
ML12024A340	10/31/2011	05000247 05000286	Non-Publicly Available	2011/10/31 Indian Point LR Hearing - RE SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION FOURTH 10-YEAR INSERVICE INSPECTION REQUEST FOR RELIEF NO. IP2-ISI-RR-13	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process

Appendix 5

ADAMS Search Results

Search Criteria: DKT=05000247, Contents contains "divider plate", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML081370440	4/2/2008	05000247 05000286	Non-Publicly Available	2008/04/02 Indian Point LR Hearing - Edits for scoping comments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate
ML081370447	4/3/2008	05000247 05000286	Non-Publicly Available	2008/04/03 Indian Point LR Hearing - batches #1 and #2 with edits	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML092150269	7/6/2009	05000247 05000286	Non-Publicly Available	2009/07/06 Indian Point LR Hearing - RE: IP Final SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 7/Deliberative Process
ML103120267	10/6/2010	05000247 05000286	Non-Publicly Available	2010/10/06 Indian Point LR Hearing - Approved RAIs.....FW: Reviewed RAIs for Indian Point and Prairie Island	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML103120409	11/8/2010	05000247 05000286	Non-Publicly Available	2010/11/08 Indian Point LR Hearing - FW: Approved RAIs.....FW: Reviewed RAIs for Indian Point and Prairie Island	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process
ML110180529	2/10/2011	05000247 05000286	Publicly Available	01/06 & 12/2011-Summary of Telephone Conference Calls, Between the NRC and Entergy Nuclear Operations Inc., Concerning D-RAI Pertaining to the Indian Point Nuclear Generating Unit Numbers 2 and 3, License Renewal Application.	/Recent Released Documents/February 2011/February 11, 2011 /NRR/NRR-DLR/Branch Folders/KGreen /STAFF HEARING FILES - STAGED/Indian_PT_2&3_50-247&50-286-LR/Indian PT Hearing File/Update 36
ML110310126	11/8/2010	05000247 05000286	Non-Publicly Available	2010/11/08 Indian Point LR Hearing - RE: Approved RAIs.....FW: Reviewed RAIs for Indian Point and Prairie Island	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 25/Deliberative Process
ML110310228	1/31/2011	05000247 05000286	Non-Publicly Available	2011/01/31 Indian Point LR Hearing - RAI/LRA Supplement Status for IP	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 25/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML11077A039	11/14/2007	05000247 05000286	Non-Publicly Available	2007/11/14 Indian Point LR Hearing - For LBB	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 26/Deliberative Process
ML110900300	3/31/2011	05000247 05000286	Non-Publicly Available	2011/03/31 Indian Point LR Hearing - FW: Assessment of All In-House Applications for Operating Experience Commitments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 27/Deliberative Process
ML11157A013	6/6/2011	05000247 05000286	Non-Publicly Available	2011/06/06 Indian Point LR Hearing - Steam Generator - RE: Please give me one paragraph on your pending issue(s) regarding Indian Point ASAP	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 29/Deliberative Process
ML11207A437	7/26/2011	05000247 05000286	Non-Publicly Available	2011/07/26 Indian Point LR Hearing - FW: Input?	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 30/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML11209C929	7/28/2011	05000247 05000286	Non-Publicly Available	2011/07/28 Indian Point LR Hearing - FW: IP SER supplement inputs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11215A184	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - RE: revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11215A185	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - Re: revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11215A186	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - RE: revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML11236A321	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11236A337	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing - FW:	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11263A282	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - RE revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process
ML12018A317	12/7/2011	05000247 05000286	Non-Publicly Available	2011/12/07 Indian Point LR Hearing - Re: Indian Point Teleconference Follow-Up	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12018A319	12/7/2011	05000247 05000286	Non-Publicly Available	2011/12/07 Indian Point LR Hearing - FW: Indian Point Teleconference Follow-Up	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process

Appendix b

ADAMS Search Results

Search Criteria: DKT=05000286, Contents contains "divider plate", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML081370440	4/2/2008	05000247 05000286	Non-Publicly Available	2008/04/02 Indian Point LR Hearing - Edits for scoping comments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate
ML081370447	4/3/2008	05000247 05000286	Non-Publicly Available	2008/04/03 Indian Point LR Hearing - batches #1 and #2 with edits	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML092150269	7/6/2009	05000247 05000286	Non-Publicly Available	2009/07/06 Indian Point LR Hearing - RE: IP Final SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 7/Deliberative Process
ML103120267	10/6/2010	05000247 05000286	Non-Publicly Available	2010/10/06 Indian Point LR Hearing - Approved RAIs.....FW: Reviewed RAIs for Indian Point and Prairie Island	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML103120409	11/8/2010	05000247 05000286	Non-Publicly Available	2010/11/08 Indian Point LR Hearing - FW: Approved RAIs.....FW: Reviewed RAIs for Indian Point and Prairie Island	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process
ML110180529	2/10/2011	05000247 05000286	Publicly Available	01/06 & 12/2011-Summary of Telephone Conference Calls, Between the NRC and Entergy Nuclear Operations Inc., Concerning D-RAI Pertaining to the Indian Point Nuclear Generating Unit Numbers 2 and 3, License Renewal Application.	/Recent Released Documents/February 2011/February 11, 2011 /NRR/NRR-DLR/Branch Folders/KGreen /STAFF HEARING FILES - STAGED/Indian_PT_2&3_50-247&50-286-LR/Indian PT Hearing File/Update 36
ML110310126	11/8/2010	05000247 05000286	Non-Publicly Available	2010/11/08 Indian Point LR Hearing - RE: Approved RAIs.....FW: Reviewed RAIs for Indian Point and Prairie Island	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 25/Deliberative Process
ML110310228	1/31/2011	05000247 05000286	Non-Publicly Available	2011/01/31 Indian Point LR Hearing - RAI/LRA Supplement Status for IP	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 25/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML11077A039	11/14/2007	05000247 05000286	Non-Publicly Available	2007/11/14 Indian Point LR Hearing - For LBB	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 26/Deliberative Process
ML110900300	3/31/2011	05000247 05000286	Non-Publicly Available	2011/03/31 Indian Point LR Hearing - FW: Assessment of All In-House Applications for Operating Experience Commitments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 27/Deliberative Process
ML11157A013	6/6/2011	05000247 05000286	Non-Publicly Available	2011/06/06 Indian Point LR Hearing - Steam Generator - RE: Please give me one paragraph on your pending issue(s) regarding Indian Point ASAP	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 29/Deliberative Process
ML11207A437	7/26/2011	05000247 05000286	Non-Publicly Available	2011/07/26 Indian Point LR Hearing - FW: Input?	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 30/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML11209C929	7/28/2011	05000247 05000286	Non-Publicly Available	2011/07/28 Indian Point LR Hearing - FW: IP SER supplement inputs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11215A184	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - RE: revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11215A185	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - Re: revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11215A186	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - RE: revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML11236A321	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11236A337	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing - FW:	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11263A282	8/3/2011	05000247 05000286	Non-Publicly Available	2011/08/03 Indian Point LR Hearing - RE revision to SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process
ML12018A317	12/7/2011	05000247 05000286	Non-Publicly Available	2011/12/07 Indian Point LR Hearing - Re: Indian Point Teleconference Follow-Up	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process
ML12018A319	12/7/2011	05000247 05000286	Non-Publicly Available	2011/12/07 Indian Point LR Hearing - FW: Indian Point Teleconference Follow-Up	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 36/Deliberative Process/Deliberative Process

Appendix 7

ADAMS Search Results

Search Criteria: DKT=05000247, Contents contains "metal fatigue", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML081210319	1/9/2008	05000247 05000286	Publicly Available	Inspection Cover Sheet and Inspection Plan - Indian Point 2 & 3.	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process 2 /Recent Released Documents/March 2009/March 04, 2009 /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 1/Publicly Available
ML081280485	5/1/2008	05000247 05000286	Publicly Available	2008/05/01-In the Matter of Entergy Nuclear Operations, Inc., Informing Licensing Board that on April 30, 2008, Entergy Nuclear Operations Submitted Amendment No. 4 to License Renewal Application for Indian Point.	/ELECTRONIC DOCKET-OFFICIAL/GENERAL_PROCEEDINGS/Indian_PT_2&3_50-247&50-286-LR/Indian PT Pleadings/2008 Pleadings /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Adjudicatory Files /Recent Released Documents/May 2008/May 16, 2008
ML081370440	4/2/2008	05000247 05000286	Non-Publicly Available	2008/04/02 Indian Point LR Hearing - Edits for scoping comments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate
ML081370447	4/3/2008	05000247 05000286	Non-Publicly Available	2008/04/03 Indian Point LR Hearing - batches #1 and #2 with edits	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082340980	8/6/2008	05000247 05000286	Non-Publicly Available	2008/08/06 Indian Point LR Hearing - FW: IP 2/3 LRA - SERwOI - 3.5 AMR - Completed	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML082590134	7/21/2008	05000247 05000286	Non-Publicly Available	2008/07/21 Indian Point LR Hearing - RE: SER Section 3.6.2.3	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082590156	4/16/2008	05000247 05000286	Non-Publicly Available	2008/04/16 Indian Point LR Hearing - Re: SER Input with open Items	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML103260717	11/19/2010	05000247 05000286	Non-Publicly Available	2010/11/19 Indian Point LR Hearing - Indian Point - Metal Fatigue 6260 locations RAI	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process
ML103260721	11/19/2010	05000247 05000286	Non-Publicly Available	2010/11/19 Indian Point LR Hearing - concurred RAI RE: Indian Point - Metal Fatigue 6260 locations RAI EOM	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process
ML103470386	12/13/2010	05000247 05000286	Non-Publicly Available	2010/12/13 Indian Point LR Hearing - Please Read - Indian Point Small-Bore RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 23/Deliberative Process
ML11209C933	7/28/2011	05000247 05000286	Non-Publicly Available	2011/07/28 Indian Point LR Hearing - FW: IP Supplemental SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11236A321	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML11236A337	8/24/2011	05000247 05000286	Non-Publicly Available	2011/08/24 Indian Point LR Hearing - FW:	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 32/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process
ML12037A263	2/6/2012	05000247 05000286	Non-Publicly Available	2012/02/06 Indian Point LR Hearing - FW:	/STAFF HEARING FILES/IPLR Hearing Files/OGC Not Reviewed/IPLR Email Capture

Appendix 8

ADAMS Search Results

Search Criteria: DKT=05000286, Contents contains "metal fatigue", Date Range 04/01/2007 – 02/07/2012

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML080230647	1/22/2008	05000247 05000286	Publicly Available	2008/01/22 Indian Point LR Hearing - Indian Point License Renewal - NRC Staff Response to PHASE / FUSE Petitions	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Adjudicatory Files /Recent Released Documents/July 2008/July 07, 2008
ML080230649	1/22/2008	05000247 05000286	Publicly Available	2008/01/22 Indian Point LR Hearing - Indian Point Liceinse Renewal - NRC Staff Response to Seven Petitions	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Adjudicatory Files /Recent Released Documents/July 2008/July 07, 2008
ML081021215	1/23/2008	05000247 05000286	Non-Publicly Available	2008/01/23 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML081210319	1/9/2008	05000247 05000286	Publicly Available	Inspection Cover Sheet and Inspection Plan - Indian Point 2 & 3.	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process 2 /Recent Released Documents/March 2009/March 04, 2009 /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 1/Publicly Available
ML081280485	5/1/2008	05000247 05000286	Publicly Available	2008/05/01-In the Matter of Entergy Nuclear Operations, Inc., Informing Licensing Board that on April 30, 2008, Entergy Nuclear Operations Submitted Amendment No. 4 to License Renewal Application for Indian Point.	/ELECTRONIC DOCKET-OFFICIAL/GENERAL_PROCEEDINGS/Indian_PT_2&3_50-247&50-286-LR/Indian PT Pleadings/2008 Pleadings /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Adjudicatory Files /Recent Released Documents/May 2008/May 16, 2008

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML081370440	4/2/2008	05000247 05000286	Non-Publicly Available	2008/04/02 Indian Point LR Hearing - Edits for scoping comments	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate
ML081370447	4/3/2008	05000247 05000286	Non-Publicly Available	2008/04/03 Indian Point LR Hearing - batches #1 and #2 with edits	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082590134	7/21/2008	05000247 05000286	Non-Publicly Available	2008/07/21 Indian Point LR Hearing - RE: SER Section 3.6.2.3	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082590156	4/16/2008	05000247 05000286	Non-Publicly Available	2008/04/16 Indian Point LR Hearing - Re: SER Input with open Items	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082630686	9/11/2008	05000247 05000286	Non-Publicly Available	2008/09/11 Indian Point LR Hearing - FW: Rev. 1 of SERwOI for 3.5	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Deliberative Process
ML082890386	1/24/2008	05000247 05000286	Publicly Available	2008/01/24 Indian Point LR Hearing - RE: Draft Telecon Summary - Metal Fatigue, January 22, 2008	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Initial Disclosures/Duplicate /Recent Released Documents/November 2008/November 25, 2008
ML090500069	9/30/2007	05000247 05000286	Non-Publicly Available	GZA-IP-001, Rev. 0, "Radiological Groundwater Monitoring Program Quality Assurance and Procedures," Indian Point Energy Center.	/ADAMS Security Editor/Jeryll /STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Disclosures re GW issues/Supplement 1 GW Disclosures/Sensitive - Other
ML092530393	8/26/2009	05000247 05000286	Non-Publicly Available	2009/08/26 Indian Point LR Hearing - ACRS Full Committee Meeting on 9/10 at 8:30 am	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 8/Deliberative Process

Accession Number	Document Date	Docket Number	Availability	Title	Folders
ML092530572	8/26/2009	05000247 05000286	Non-Publicly Available	2009/08/26 Indian Point LR Hearing -	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 8/Deliberative Process
ML092530574	8/26/2009	05000247 05000286	Non-Publicly Available	2009/08/26 Indian Point LR Hearing - ACRS Full Committee Meeting on 9/10 at 8:30 am	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 8/Deliberative Process
ML092530577	8/26/2009	05000247 05000286	Non-Publicly Available	2009/08/26 Indian Point LR Hearing - RE: ACRS Full Committee Meeting on 9/10 at 8:30 am	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 8/Deliberative Process
ML103260717	11/19/2010	05000247 05000286	Non-Publicly Available	2010/11/19 Indian Point LR Hearing - Indian Point - Metal Fatigue 6260 locations RAI	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process
ML103260721	11/19/2010	05000247 05000286	Non-Publicly Available	2010/11/19 Indian Point LR Hearing - concurred RAI RE: Indian Point - Metal Fatigue 6260 locations RAI EOM	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 22/Deliberative Process
ML103470386	12/13/2010	05000247 05000286	Non-Publicly Available	2010/12/13 Indian Point LR Hearing - Please Read - Indian Point Small-Bore RAIs	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 23/Deliberative Process
ML11209C933	7/28/2011	05000247 05000286	Non-Publicly Available	2011/07/28 Indian Point LR Hearing - FW: IP Supplemental SER	/STAFF HEARING FILES/IPLR Hearing Files/OGC Reviewed/Update 31/Deliberative Process

NRC Staff Hearing File Disclosure Document Count Totals

Attachment 2

Hearing File #	# of Public Documents	# of Privileged Documents	# of Proprietary/ Sensitive Documents
Initial	1174	491	8
Groundwater Initial	900	7	0
Supplement 1	80	20	3
Groundwater Update 1	163	26	9
Supplement 2	7	5	0
Supplement 3	11	0	0
Supplement 4	13	20	1
Supplement 5	3	3	0
Supplement 6	9	14	0
Supplement 7	61	35	0
Supplement 8	22	17	0
Supplement 9	6	13	0
Supplement 10	13	13	0
Supplement 11	12	12	0
Supplement 12	14	10	0
Supplement 13	6	1	0
Supplement 14	0	3	0
Supplement 15	3	0	0
Supplement 16	1	1	0
Supplement 17	0	7	0
Supplement 18	6	9	0
Supplement 19	1	2	0
Supplement 20	11	6	0
Supplement 21	7	14	0
Supplement 22	4	31	0
Supplement 23	9	9	0
Supplement 24	13	0	0
Supplement 25	10	70	0
Supplement 26	25	50	1
Supplement 27	13	21	0
Supplement 28	4	7	0
Supplement 29	20	8	0

NRC Staff Hearing File Disclosure Document Count Totals

Attachment 2

Hearing File #	# of Public Documents	# of Privileged Documents	# of Proprietary/ Sensitive Documents
Supplement 30	34	20	0
Supplement 31	14	17	0
Supplement 32	19	13	1
Supplement 33	56	20	0
Supplement 34	2	8	0
Supplement 35	2	3	0
Supplement 36	18	51	0
Totals	2766	1057	23

Turk, Sherwin Attachment 3

From: Turk, Sherwin
Sent: Wednesday, January 04, 2012 3:23 PM
To: 'John.Sipos@ag.ny.gov'; 'Phillip Musegaas'
Cc: Deborah Brancato; 'Janice.Dean@ag.ny.gov'; 'Bessette, Paul M.'; O'Neill, Martin; Harris, Brian; Mizuno, Beth; Roth(OGC), David
Subject: Proposed resolution of Board directive

John and Philip -

The Licensing Board's Order of December 14, 2011, directed:

(1) "the Staff, in tandem with New York and/or Riverkeeper," to report by January 6, 2012, on "the status of discussions regarding the adequacy and scope of mandatory disclosures for Contention NYS-38/RK-TC-5";

(2) if the parties are unable to resolve this issue promptly, New York and/or Riverkeeper are to inform the Board by January 6, 2012, as to whether a motion to compel will be filed and, if so, to suggest a date by which they would submit such motion; and

(3) if no such motion is to be filed, New York and/or Riverkeeper are to suggest the date by which they can file evidentiary submissions on Contention NYS-38/RK-TC-5.

I do not believe there is an open issue for us to resolve regarding mandatory disclosures, at least insofar as the Staff's disclosures are involved. As I stated during the prehearing conference on December 6, 2011, the Staff has been disclosing documents related to the Indian Point license renewal application, including documents that may relate to Contention NYS-38/RK-RC-5, on a routine basis, regardless of whether they relate to an admitted contention (Tr. 991-92). To our knowledge, there are no Staff documents that have not been disclosed. I therefore do not see any open issue that needs to be resolved. If you believe differently, or if there are New York or Riverkeeper documents that have not been disclosed, please advise me by COB tomorrow, January 5, so we can bring this matter to conclusion.

Thanks very much.

Sherwin E. Turk
Special Counsel for Litigation
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
(301) 415-1533

Turk, Sherwin Attachment 4

From: John J. Sipos [John.Sipos@ag.ny.gov]
Sent: Wednesday, January 04, 2012 3:30 PM
To: Turk, Sherwin; 'phillip@riverkeeper.org'
Cc: Janice Dean
Subject: Re: Proposed resolution of Board directive

Sherwin:

Thank you for the email. Coincidently, even before receiving the email, I was planning to call you today to discuss the issues that you outlined. I anticipate that I will do so within the next hour. Shall I call you at your office number?

John

Message sent from a Blackberry device

From: Sherwin Turk <Sherwin.Turk@nrc.gov>
To: John J. Sipos; Phillip Musegaas <phillip@riverkeeper.org>
Cc: Janice Dean; Martin O'Neill <martin.o'neill@morganlewis.com>; Paul M. Bessette <pbessette@morganlewis.com>; Beth Mizuno <Beth.Mizuno@nrc.gov>; Brian Harris <Brian.Harris@nrc.gov>; David Roth(OGC) <David.Roth@nrc.gov>; Deborah Brancato <DBrancato@riverkeeper.org>
Sent: Wed Jan 04 15:22:56 2012
Subject: Proposed resolution of Board directive

John and Philip -

The Licensing Board's Order of December 14, 2011, directed:

(1) "the Staff, in tandem with New York and/or Riverkeeper," to report by January 6, 2012, on "the status of discussions regarding the adequacy and scope of mandatory disclosures for Contention NYS-38/RK-TC-5";

(2) if the parties are unable to resolve this issue promptly, New York and/or Riverkeeper are to inform the Board by January 6, 2012, as to whether a motion to compel will be filed and, if so, to suggest a date by which they would submit such motion; and

(3) if no such motion is to be filed, New York and/or Riverkeeper are to suggest the date by which they can file evidentiary submissions on Contention NYS-38/RK-TC-5.

I do not believe there is an open issue for us to resolve regarding mandatory disclosures, at least insofar as the Staff's disclosures are involved. As I stated during the prehearing conference on December 6, 2011, the Staff has been disclosing documents related to the Indian Point license renewal application, including documents that may relate to Contention NYS-38/RK-RC-5, on a routine basis, regardless of whether they relate to an admitted contention (Tr. 991-92). To our knowledge, there are no Staff documents that have not been disclosed. I therefore do not see any open issue that needs to be resolved. If you believe differently, or if there are New York or Riverkeeper documents that have not been disclosed, please advise me by COB tomorrow, January 5, so we can bring this matter to conclusion.

Thanks very much.

Sherwin E. Turk
Special Counsel for Litigation
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852

Turk, Sherwin Attachment 5

From: Turk, Sherwin
Sent: Friday, January 06, 2012 4:52 PM
To: 'John J. Sipos'
Cc: Roth(OGC), David; Mizuno, Beth; Harris, Brian; 'Deborah Brancato'
Subject: Re: Your inquiry about telephone communications

John –

You raised a question in our conversation yesterday about the Staff's documentation and disclosure of telephone conversations with Entergy regarding the Indian Point license renewal application, and specifically, regarding Entergy's commitments. I discussed your inquiry with the Staff's current and former project managers for Indian Point LRA safety issues, and was informed as follows.

Both the current and former project manager informed me that they were diligent in including all known documents in the hearing file. In the event that Entergy or any other applicant called to advise that a letter would be forthcoming shortly (i.e., a status or "heads up" call to let them know to be on the lookout for a document in the next few days), they would normally not document the call. Anything of substance or in the nature of a commitment, however, would be documented.

For example, if the applicant wanted to obtain clarification of Staff RAIs, the Staff would hold a teleconference call with the applicant and would then generate a teleconference call summary, noting the date, the participants and the topics discussed. The Staff then makes those documents publicly available in ADAMS – and the documents are sent to all persons on the NRC "ListServ," which goes to various attorneys for the State of New York, among others. In addition to being placed in ADAMS and sent out via ListServ, the documents are routinely captured in the hearing file, as drafts attached to an E-mail to the applicant (to see if any corrections are needed), or as a formal E-mail communication. Similarly, if any meetings are held with an applicant concerning the application or the Staff's technical review, the meeting would be noticed as a public meeting under the Sunshine Act, and a meeting summary would then be prepared and placed in ADAMS and the hearing file.

If the project manager jotted down any personal notes during a telephone conversation with an applicant, e.g., as a reminder to do something or to watch for a submittal, but did not share those notes with any other person, the notes would not be agency records as stated in the Commission's decision in CLI-08-23. In that case, the notes would typically be discarded when the person's task was completed and a reminder was no longer needed. As stated above, discussions of a more important or substantive nature would be summarized in the telephone conference call summary and would be made available in ADAMS and the hearing file.

We have searched ADAMS for the most recent teleconference call summaries that were issued concerning topics in SER Supplement 1 and/or Contention 38. We found four teleconference call summaries that are publicly available in ADAMS and were documented in SER Supplement 1. These are:

ML11178A335
ML11215A056
ML11215A088
ML112270145

In addition, we found one teleconference call summary that is publicly available in ADAMS but was not referenced in the SER or the SER Supplement:

ML110180529

We have arranged to place these documents in the hearing file, in case they are not there already. We are not aware of any telephone call summaries or other documents that should have been, but were not, placed in the hearing file, with the possible exception of these documents. Documents of this nature (teleconference call or meeting summaries) are routinely forwarded to all persons on the NRC's ListServ, including the New York State attorneys who have requested to be included in ListServ.

Finally, as I reiterated during our telephone conversation today, all NRC publicly available documents, including documents that are not required to be in the Staff's mandatory disclosures or hearing file, are available to you in ADAMS. I understand from our conversation that you are interested in finding documents pertaining to the WESTEMS issue that is discussed on page 4-2 of SER Supplement 1, in addition to the documents referenced there (ADAMS Accession Nos. ML103430502 and ML110250634). Please let me know if you are unable to find what you are looking for after searching ADAMS.

I hope we are able to resolve this matter to our mutual satisfaction today, so we can finalize our report to the Board as required.

Sincerely,
Sherwin

Turk, Sherwin Attachment 6

From: Turk, Sherwin
Sent: Friday, January 06, 2012 6:47 PM
To: 'John J. Sipos'
Cc: 'Deborah Brancato'; Mizuno, Beth; Harris, Brian; Roth(OGC), David
Subject: Suggestions on the table

John –

I want to confirm a few points that we discussed today.

First, I suggested that you go into ADAMS and do a search for WESTEMS to see what you find aside from documents in the hearing file. In a subsequent conversation this afternoon, you told me that you did as I suggested, and that you found no documents. I then opened ADAMS, did a "content search" for "WESTEMS", and found over 200 documents, most of which are publicly available. I described this search to you, described some of the documents that were returned (e.g., meetings and communications with Westinghouse; filings in other license renewal proceedings, and non-public proprietary filings by Riverkeeper in the Indian Point proceeding). I suggested that you attempt to duplicate this search.

Second, in the interest of resolving our dispute without a motion, I invited you to send us a limited document request, e.g., seeking documents related to WESTEMS, so that we can pass the request to the Staff to find documents for you that are not in the Indian Point hearing file. I also noted that this would not work if you send us a broad document request that requires us to search ADAMS for a wide range of documents. You told me you will consider that approach.

With best wishes,

Sherwin E. Turk
Special Counsel for Litigation
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
(301) 415-1533

Turk, Sherwin Attachment 7

From: John J. Sipos [John.Sipos@ag.ny.gov]
Sent: Wednesday, January 25, 2012 5:00 PM
To: Turk, Sherwin
Cc: Janice Dean
Subject: Staff Disclosures & Consultation

Dear Sherwin:

Thank you for your suggestion and willingness to summarize and describe the results of a search query that provided a base line for comparison. I've been trying to get my "sea legs" with the new search portal for public ADAMS (which was rolled out in December). After several unsuccessful efforts, I presented a query to ADAMS that actually located and presented documents that responded to the query (concerning Westems). It seems that part of the issue was the Advanced Search function has materially changed between the previous and current search portals for public ADAMS and that the Content Searching function (which you called to my attention) now may be the better option relative to Advanced Search.

As you suggested, I've also reviewed CLI-08-23 (*Amergen*) in connection with Staff's position as to what constitutes a "record." As you have noted, *Amergen* does address the National Records Act and regulations in the context of "records," but I don't see that the decision addresses "documents" in the context of 10 C.F.R. § 2.336. The State is concerned that the summaries of the private telephone conversations between NRC and Entergy may not provide sufficient detail regarding the substance of those conversations and the back and forth dialogue of such meetings. (This concern would be alleviated if the State had been permitted to attend or monitor such meetings (as I understand the State of Nevada is permitted in the Dept. of Energy Yucca proceeding)). At this juncture, however, the State has no independent way to verify the fulsomeness or accuracy of the summaries as it has been excluded from such conversations. And I will accept your representations on behalf of Staff.

The State nevertheless does continue to have concerns about:

1. the scope of Staff disclosures

   (a) with respect to documents related to admitted contentions that were not examined as part of the Staff's review of the application, but have been used, or reviewed, or generated as part of the Staff's response to the admitted contentions;

   (b) with respect to documents that are used, reviewed, or generated by contractors (*e.g*, SNL, PNNL, INL) working for NRC Staff as part of their review of the application or as part of their review and response to admitted contentions.

2. and the schedule (timing) for placing such documents on ADAMS (apart from scanning and/or loading).

Based on our previous discussions, I understand that NRC Staff fundamentally disagrees that its disclosure obligations include the above documents. In contrast, the State believes that such documents do fall within the scope of disclosures that Staff (and its contractors or experts) should make under Part 2 given that Staff has intervened as a party, has opposed the State's admitted contentions (including NYS-38), and is completing expert reports and prefiled testimony. Given this difference, it seems appropriate that this issue be resolved by the Board.

I've looked into the ongoing rulemaking, which you referenced, and want to provide you with the following observations. OGC and the Commission interpret the language of § 2.336(b)(3) as including disclosure of all documents relevant to admitted contentions because they are part of the larger group of documents that are relevant to the application. See 76 Fed. Reg. 10781 (Feb. 28, 2011), Amendments to Adjudicatory Process Rules and Related Requirements, Proposed Rules (NRC solicitation of comments on potential amendments to NRC Staff mandatory disclosure obligations under 10 C.F.R. § 2.336(b)). The notice identified an issue that might warrant correction as follows:

> under § 2.336(b)(3) the NRC staff must disclose all documents supporting the staff's review of the application or proposed action that is the subject of the proceeding without regard to whether the documents are relevant to the admitted contentions.

76 Fed. Reg. at 10790. The memorandum from OGC that accompanied the proposed rule to the Commission made clear that the current requirements of 10 C.F.R. § 2.336(b)(3) include all documents related to admitted contentions since they are part of all documents associated with the application itself. Also, in an OGC memo recommending adoption of the final rule, OGC confirms the view that as currently written § 2.336(b)(3) requires, among other things, disclosure by Staff of all documents in its possession relevant to admitted contentions:

> OGC recommends that the Commission adopt a revised § 2.336(b) that will limit the scope of the staff's mandatory disclosures to documents relevant to the admitted contentions; currently, the staff's mandatory disclosure obligations effectively extend to all documents relevant to the application.

SECY-12-0004, Final Rule—10 CFR Parts 2, 12, 51, 54, and 61 "Amendments to Adjudicatory Process Rules and Related Requirements" (RIN 3150-AI43) January 10, 2012 at 5. I suggest that these documents support the State's view.

John Sipos
Assistant Attorney General
tel. 518 - 402 - 2251

Turk, Sherwin Attachment 8

From: Turk, Sherwin
Sent: Friday, January 27, 2012 10:44 AM
To: 'John J. Sipos'
Cc: Janice Dean; Harris, Brian; Mizuno, Beth; Ghosh, Anita; Roth(OGC), David
Subject: RE: Staff Disclosures & Consultation

John-

Thanks for your E-mail message of January 25, 2012 (5:00 PM), concerning the Staff's disclosures in the Indian Point proceeding.

Unfortunately, although I have read your message several times, I'm not sure what specific discovery you are requesting, and do not know if you are planning to file a motion to compel -- and if you are planning to file a motion, what it is that you are seeking.

With respect to the specific statements in your message:

1. I appreciate your statement of thanks for my suggestion that you conduct your ADAMS searches using the "Content" search option in the new public ADAMS portal, and your confirmation that when you tried that approach, you obtained good results ("After several unsuccessful efforts, I presented a query to ADAMS that actually located and presented documents that responded to the query (concerning Westems). It seems that . . . the Content Searching function (which you called to my attention) now may be the better option relative to Advanced Search.") If you find you need any further guidance on conducting ADAMS searches, I would be happy to refer your request to an appropriate NRC employee who may be able to provide further assistance to you.

2. The Commission's decision in CLI-08-23 recites the agency's law – binding on both the Staff and the Licensing Board -- as to what constitutes a "record." The Commission also addressed the question of whether papers that do not constitute agency records must be retained. I therefore see no basis for your suggestion that an individual's personal (i.e., un-shared) notes of telephone conversations that do not contain unique information must be retained when the individual determines he/she has no need for them and they are not agency records. You may recall that I addressed this as well in the January 14, 2009 prehearing conference (Tr. 799-800). Thus, this issue has been resolved.

3. I am aware of no basis for your concern that written "summaries of the private telephone conversations between NRC and Entergy may not provide sufficient detail regarding the substance of those conversations and the back and forth dialogue of such meetings." NRC employees are not required to make verbatim summaries of all telephone conversations; rather, they are responsible for making accurate summaries of their conversations with licensees and applicants, sufficient to assure the proper conduct of the agency's regulatory functions. While you express the view that "[t]his concern would be alleviated if the State had been permitted to attend or monitor such meetings," the Board has previously rejected your request that the Staff notify you in advance and include you in NRC-applicant discussions, requiring only that the Staff describe its procedures "to insure that the substance of communications between the NRC Staff and Entergy is provided to all the parties and the other participants in a complete and timely manner." Memorandum and Order (Dec. 18, 2008), at 4-5. As the Board directed, I provided a description of the Staff's procedures during the prehearing conference of January 14, 2009 (Tr. 804-806, 819), and the Board then addressed this issue in its Memorandum and Order of February 4, 2009, at 6. This issue has also been resolved.

4. In addition to providing a final telephone call and meeting summaries, the Staff typically sends drafts of its meeting and telephone call summaries to Applicant, to be sure the summaries are accurate; those communications are then placed in the Indian Point hearing file, so you typically will be able to see both the draft and the final versions of those summaries. I discussed this issue, as well, in my E-mail message of January 6, 2012. While I

understand your concern that "the State has no independent way to verify the fulsomeness or accuracy of the summaries as it has been excluded from such conversations," I am aware of no reason why you should doubt the accuracy and substantial completeness of the Staff's summaries. I therefore don't see an open issue here.

5. With regard to the scope of Staff disclosures, you continue to misinterpret the requirements for Staff disclosures and the hearing file, as set forth in 10 CFR 2.336(b) and 2.1203. We have discussed this issue on numerous occasions previously. For example, I addressed this issue in my letters to you fully two years ago (December 31, 2009), in my letter of December 30, 2011, and in various E-mail communications (e.g., in my E-mail of January 6, 2012). As I remarked previously, your interpretation is inconsistent with the language in those regulations and is contrary to well-established agency practice and precedent in all agency proceedings – as discussed in my letters of December 2009 and December 2011. Indeed, if your interpretation was correct, the Staff would be required, in each and every licensing proceeding, to create a massive hearing file that contains every record pertaining to any generic or site-specific issue that was ever raised regarding any facility, regardless of whether those documents were utilized or referred to by Staff members in their review of the application at hand. For example, all generic documents relating to nuclear power plant safety, all documents pertaining to the environmental impacts of nuclear power plants, and all documents pertaining to any nuclear plant's operating experience, would have to be included in each license renewal proceeding hearing file – notwithstanding the fact that such documents are available in ADAMS – since one could never know whether that document might have some general relevance to an issue that has been or might later be raised in the specific proceeding. That view is simply unsupportable.

6. Your reference to the proposed rulemaking does not support your position; the proposed rulemaking, if adopted, will limit the Staff's existing broad discovery obligations (documents relating to the application, rather than to specific contentions), and it provides no support for your expansive interpretation of existing Staff discovery obligations. Similarly, your reference to the OGC Memorandum – which incorporates the views of Staff Counsel – does not support your reading of the existing regulations.

7. In addition, it is really quite late for you to be raising this issue now. You had raised this issue two years ago, and I addressed it in my letter of December 2009. You never raised the issue again until now, and you failed to seek a Board ruling on your interpretation throughout the lengthy period of discovery that has consumed so much effort by the Staff, the State, and other parties. If you believe the Staff has been misinterpreting its own discovery obligations, you should have raised the issue in a more timely manner – rather than waiting until this late stage of the proceeding, when you have already wrapped up your case and submitted your testimony and exhibits, when the Staff and Applicant are finalizing their testimony, exhibits and position statements, and when evidentiary hearings are set to commence in a few months.

8. I do not understand your reference to "documents related to admitted contentions that were not examined as part of the Staff's review of the application, but have been used, or reviewed, or generated as part of the Staff's response to the admitted contentions." This statement appears to be a reference to documents that the State filed in this proceeding, either in support of its contentions or in support of the State's position on summary disposition motions, which the Staff read in preparing to respond to the State's views. You have those documents already, and they are readily searchable in ADAMS, so you have no need for discovery to find those documents. Similarly, to the extent that the Staff's Answers to contentions or summary disposition motions may have referred to any specific documents, you either have those documents, or can readily find them based on the Staff's identification of them – and in any event, you could have requested copies several years ago, whenever the Staff filed the particular Answer that may be of concern to you.

9. With respect to "documents that are used, reviewed, or generated by contractors (*e.g.*, SNL, PNNL, INL) working for NRC Staff as part of their review of the application or as part of their review and response to admitted contentions," those documents are routinely placed in the hearing file or explicitly identified in the Staff's review documents (such as the SER, the FSEIS, and Sandia's reports) – all of which have been provided to you. You therefore have no need for discovery to find those documents.

Based on the foregoing, I truly see no basis for your statement that "it seems appropriate that this issue be resolved by the Board."

John, I'm quite willing to work with you to help you obtain any documents you feel you need. As I've stated before, I believe the Staff has been diligent in meeting its discovery and hearing file obligations, and has acted in a manner that is consistent with the regulations and Staff practice in other proceedings. I have also attempted to satisfy your needs, by providing guidance on how to conduct a useful search of ADAMS, and by offering to accept a focused discovery request from you, as stated in my E-mail message of January 6, 2012 (6:47 PM). While you expressed appreciation for my ADAMS guidance, you did not respond to my statement that I would be willing to accept and respond to a focused discovery request, nor have you requested that the Staff produce any particular documents. Given the lateness of your expressed interest in filing a motion before the Board, and the Staff's palpable need to maintain its current focus on preparing its testimony, exhibits and statements of position, due for filing a few weeks from now, in the interest of avoiding any unnecessary distraction, I would ask you to reconsider the need for filing of a motion before the Board.

With best wishes,

Sincerely,
Sherwin

Turk, Sherwin Attachment 9

From: John J. Sipos [John.Sipos@ag.ny.gov]
Sent: Friday, January 27, 2012 3:29 PM
To: Turk, Sherwin
Cc: Ghosh, Anita; Mizuno, Beth; Harris, Brian; Roth(OGC), David; 'Deborah Brancato'; 'Musegaas, Phillip'; Janice Dean
Subject: RE: Staff Disclosures & Consultation

Dear Sherwin:

Thank you for your email of this morning. While our discussions over the past weeks have resolved some of the State's concerns, a fundamental difference of opinion remains between Staff's view of its disclosure obligations under Part 2 and the State view of the scope of those ongoing disclosure obligations as they relate to Contention NYS 38/RK-TC-5 ("Contention 38").

> (a) with respect to documents related to admitted contentions that were not examined as part of the Staff's review of the application itself, but have been used, or reviewed, or generated as part of the Staff's response to the specific admitted contentions;
>
> (b) with respect to documents that are reviewed, used, or generated by witnesses or contractors (*e.g*, SNL, ISL, PNNL, INL) working for NRC Staff as part of their review of the application or as part of their review and response to admitted contentions.

As I have stated in our recent discussions, Staff's view of its disclosure obligations does not take account of the fact that Staff has decided to participate in this proceeding as a party, that this proceeding includes various contentions that have been admitted by the ASLB, that Staff has actively opposed the State's admitted contentions. The view that Staff need not disclose to New York documents within Staff's possession that fall within the above categories is inconsistent with the philosophy behind mandatory discovery and fairness which motivated amendments to the Federal Rules of Civil Procedure and the 2004 amendments to Part 2. It is also inconsistent with § 2.336(b)(3) that requires disclosure of documents that provide opposition to the proposed action and it does not come to grip with the fact that once NRC chooses to participate as a party it undertakes the responsibilities of a party. As I have discussed with you, this provision is akin to public interest obligation on the government in other contexts to turn over all evidence not just that supporting the government's position.

In light of the above, the State believes that the policy arguments by Staff (point 5 in your email of today and in our phone conversations) overstate the consequences. Rather than the large class of documents you list, the State believes that NRC must disclose (1) documents related to admitted contentions that were not examined as part of the Staff's review of the application itself, but have been used, or reviewed, or generated as part of the Staff's response to the specific admitted contentions and (2) documents that are reviewed, used, or generated by witnesses or contractors (*e.g*, SNL, ISL, PNNL, INL) working for NRC Staff as part of their review of the application or as part of their review and response to admitted contentions The same would hold true for documents or communications related to, for example, EPRI's work on embrittlement being carried out in response to Staff concerns with MRP-227.

With respect to your question about the group of documents identified by the State (points 8 & 9 of your email), I am sorry if you did not understand the State's point or if it was unclear. The State is not specifically referring only to exhibits that the State submitted as part of its prefiled submissions. Rather, the reference was to documents related to admitted contentions that were not examined as part of the Staff's review of the application itself, but have been used, or reviewed, or generated as part of the Staff's and its witnesses efforts to respond to the specific admitted contentions.

During the recent January 18 hearing, Staff indicated that its witnesses had either completed prefiled testimony or were well on the way to completing the testimony and marshalling exhibits. Yet neither the names of these experts nor the documents on which they rely are being disclosed. By way of example, following the issuance of the SER or the SSER, Staff or its witnesses or consultants or contractors may have reviewed a document concerning embrittlement that is relevant to the Contention 38 and NYS-25. I recently learned that INL has begun a program to study aging degradation mechanisms for light water reactor vessels (such as embrittlement). However, although NRC is collaborating or partnering with the program, I am not aware that Staff has disclosed any documents pertaining to the program.

The past two monthly updates (November & December 2011) have seen no disclosures by Staff pertaining to NYS-38 or other NYS contentions such as NYS-26, 25, 6&7, and 5. The SSER indicated several matters that involve third parties, like EPRI and Westinghouse, that are yet to be resolved to Staff's satisfaction. Contention 38 is addressed expressly to the failure to have those matters resolved prior to conclusion of the license renewal hearing. Yet, Staff has not disclosed any documents relevant to the ongoing work on those outstanding matters including correspondence, communications and document exchanges between Staff and EPRI and Westinghouse on these matters.

Moreover, while your email references ADAMS, the NRC regulations do not provide that placing any document on ADAMS absolves NRC Staff from disclosing a relevant document in a proceeding that it has chosen to participate in as a party. The State is concerned that a lag exists between the time a document is created or received by NRC Staff and the time the document is sent to the group that processes and catalogues the document so that it may to be placed on ADAMS (I am not referring the so-called ADAMS "6 day rule" to allow such rendering).

Ultimately, even if ADAMS was perfect and documents were promptly uploaded to it on an agency-wide basis, the State does not believe that §§ 2.336 and 2.1202 and 2.1203 authorize NRC Staff to minimize its disclosure obligations to other parties in a proceeding where an Atomic Safety and Licensing Board has admitted contentions for litigation. Under the State view (and apparently OGC's view, too), NRC Staff should disclose documents that are relevant to admitted contentions. I understand that Staff continues to take the opposite view.

Given this difference, the State (and Riverkeeper) will move forward and file a motion to seek the Board's resolution of the dispute.

Thank you for your courtesies and willingness to discuss these issues.

Best regards,

John

John Sipos,
Assistant Attorney General
State of New York
518 - 402 - 2251

Turk, Sherwin Attachment 10

From: Turk, Sherwin
Sent: Friday, January 27, 2012 3:48 PM
To: 'John J. Sipos'
Cc: Roth(OGC), David; Harris, Brian; Mizuno, Beth; Ghosh, Anita
Subject: RE: Staff Disclosures & Consultation

John –

I'm sorry to hear you remain intent on filing a motion, particularly since you still have not identified any documents that you seek to discover. In essence, you seem to want to argue a philosophical point. I think that's a waste of time and resources, especially since I have twice offered to accept a discovery request from you, only to find you don't have one.

Sherwin E. Turk
Special Counsel for Litigation
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop O15-D21
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(301) 415-1533

Attachment 11

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 30, 2011

Sherwin E. Turk, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North, Mail Stop: O-15 D21
11555 Rockville Pike
Rockville, MD 20852-2738

Re: Indian Point License Renewal, Docket Nos. 50-247-LR and 50-286-LR
(ASLBP No.07-858-03-LR-BD01)

Dear Sherwin:

I have reviewed NRC's disclosures from today. The following documents are within NRC's possession and they relate to aging and degradation of pipes, cables, and reactor pressure vessels – components that are at issue in the Indian Point adjudicatory proceeding.

DOCUMENT	DATE	NRC ACCESSION NUMBER
Slides, Crevice Corrosion Pitting Corrosion IGA	8/17/2011	ML11229A050
Slides, PWSCC/LPSCC in PWRs (+ Steam Generator Corrosion)	9/23/2011	ML11266A011
Slides, Buried/Underground Piping Activities Update (NRC/ Industry Meeting on Buried Pipe)	10/20/2011	ML11297A002
Slides, NRC Aging Management Program Including Long Term Operation (LTO), Workshop on Challenges on the Long Term Operation, New Delhi, India	11/8/2011	ML111801154

The above documents confirm that the aging of such components has been discussed by NRC Staff. Indeed, Staff has apparently conversed about such issues at a November conference in India. Please help me understand why NRC Staff have not disclosed these documents to the State of New York.

Sincerely,

s/

John J. Sipos
Assistant Attorney General
(518) 402-2251

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

Attachment 12

December 30, 2011

John J. Sipos, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, NY 12224

In the Matter of
ENTERGY NUCLEAR OPERATIONS, INC.
(Indian Point Nuclear Generating Units 2 and 3)
Docket Nos. 50-247-LR/286-LR

John

Dear Mr. Sipos:

I am writing in response to your letter of November 30, 2011, in which you inquired about certain documents which the State of New York ("State") has obtained, and which the NRC Staff ("Staff") has not identified in its mandatory disclosures/hearing file supplements to date. Specifically, you inquired about the following documents which you state "relate to aging and degradation of pipes, cables, and reactor pressure vessels – components that are at issue in the Indian Point adjudicatory proceeding":

DOCUMENT	DATE	ACCESSION NO.
Slides, Crevice Corrosion Pitting Corrosion IGA	8/17/2011	ML11229A050
Slides, PWSCC/LPSCC in PWRs (+ Steam Generator Corrosion)	9/23/2011	ML11266A011
Slides, Buried/Underground Piping Activities Update (NRC/ Industry Meeting on Buried Pipe)	10/20/2011	ML11297A002
Slides, NRC Aging Management Program Including Long Term Operation (LTO), Workshop on Challenges on the Long Term Operation, New Delhi, India	11/8/2011	ML111801154

We have reviewed the documents in question and are satisfied that the documents properly were not identified in the Staff's hearing file/mandatory disclosures. In this regard, the documents constitute generically applicable documents that do not relate to the Indian Point license renewal application ("LRA") and/or were not utilized by the Staff in its review of that application. Accordingly, the documents were not required to be identified in the Staff's hearing file/mandatory disclosures pursuant to 10 C.F.R. § 2.336(b) or 10 C.F.R. § 2.1203.

More specifically, the first two documents cited in your letter (ML11229A050, ML11266A011) consist of slides prepared by Structural Integrity Associates, Inc. for presentation at an NRC Staff training course on "Corrosion and Corrosion Control in Light Water Nuclear Reactors"; the third document (ML11297A002) consists of slides presented by the Electric Power Research Institute (EPRI) at a meeting of NRC Staff and industry representatives in October 2011 concerning industry initiatives on buried and underground piping; the fourth document (ML111801154) consists of slides presented by members of the NRC Office of Nuclear Regulatory Research (NRR) at a November 2011 conference in New Delhi, India. None of these documents was utilized in the Staff's review of the Indian Point LRA, and none of them pertains specifically to the Indian Point facility. For this reason, they properly were not disclosed in the hearing file for the Indian Point LRA. Further, these documents are available to the State and members of the public through the NRC website, the NRC's Public Document Room ("PDR"), and/or in the NRC's "Agencywide Documents Access and Management System" ("ADAMS"); indeed, your letter cites the ADAMS accession numbers for each of the documents, demonstrating that the State and its experts have been able to identify and review them.

In a letter dated October 21, 2009, you presented the same question regarding other documents of a generic nature, which the Staff had not identified in its hearing file/mandatory disclosures. As I explained in my letter to you of December 31, 2009, the Staff includes specific categories of documents that relate to individual licensing actions in its mandatory disclosures pursuant to 10 C.F.R. § 2.336, and in the Staff's hearing file pursuant to 10 C.F.R. § 2.1203. Further, the NRC has adopted extensive procedures to assure that members of the public and litigants in NRC proceedings are able to obtain access to documents which may be relevant to the NRC's regulatory and licensing actions, beyond the documents required to be identified in the Staff's mandatory disclosures/ hearing file. For example, the NRC publishes its regulatory guidance documents in paper and electronic format, and makes those documents available on the NRC public Web site and in the PDR. In addition, a vast array of other generic and plant-specific documents may be found in ADAMS.

As I stated in my letter of December 31, 2009, the Staff expends considerable effort to fulfill its mandatory disclosure and hearing file obligations in accordance with NRC regulatory requirements. Those requirements do not require the disclosure, in each individual adjudicatory proceeding, of the numerous generic regulatory guidance documents or other generically applicable documents that may apply to the type of licensing action involved in the proceeding, nor is the Staff required to identify documents that are not related to the licensing action at issue in the proceeding. Such documents may be obtained through other means – as you have done in this instance – including ADAMS, the NRC website, the PDR, and other sources.

Thank you for bringing this issue to my attention.

Sincerely,

Sherwin E. Turk

Sherwin E. Turk
Counsel for NRC Staff

Attachment 13

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

October 21, 2009

Sherwin Turk
Office of the General Counsel
Mail Stop O-15-D-21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Via electronic and U.S. Mail

Re: License Renewal Application submitted by Entergy Indian Point Unit 2, LLC, Entergy Indian Point Unit 3, LLC, and Entergy Nuclear Operations, Inc., 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 Mr. Turk:

As you know, in the August 24, 2009 status conference held by telephone in the above-referenced proceeding, the Board asked parties to consider the Subpart G/Subpart L issue in anticipation of our next status conference at which time the issue, as well as any specific motion deadlines, will be discussed. The Board suggested another status conference approximately sixty days from the date of the last conference; that time period will expire shortly. In furtherance of the Board's request, the State has reviewed, and will continue to review, the Staff's disclosures pursuant to 10 C.F.R. §§ 2.336(b) and 2.1203. The State has the following concerns regarding the Staff's disclosures.

As an initial matter, the State understands Staff's disclosure obligations to be multi-faceted. Pursuant to § 2.336(b):

> the NRC staff shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and/or provide, to the extent available (but excluding those documents for which there is a claim of privilege or protected status):
>
> (1) The application and/or applicant/licensee requests associated with the application or proposed action that is the subject of the proceeding;

> (2) NRC correspondence with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;
>
> *(3) All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding*;
>
> (4) Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding; and
>
> (5) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

Id. (emphasis added). The NRC Staff is also obligated, now that it has become a party to this hearing, to meet the obligations imposed upon it by § 2.1203. Those regulations state that

> (a)(1) Within thirty (30) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall file in the docket, present to the presiding officer, and make available to the parties to the proceeding a hearing file. . . .
>
> (b) The hearing file consists of the application, if any, and any amendment to the application, and, when available, any NRC environmental impact statement or assessment and *any NRC report related to the proposed action*, as well as any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action. Hearing file documents already available at the NRC Web site and/or the NRC Public Document Room when the hearing request/petition to intervene is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.
>
> (c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section and to provide those materials as required in paragraphs (a) and (b) of this section.

Id. (emphasis added).

Given these obligations, the State is concerned about the following documents which were not disclosed in the Staff's mandatory disclosures, yet which are evidently relevant to the Staff's consideration of issues implicated in the license renewal process for Indian Point because they were annexed to Staff's response to the State of New York's Motion for Summary Disposition of Contention 16, and about the extent to which there are other discoverable documents which Staff has not disclosed but which fall under 10 C.F.R. §§ 2.336(b) and 2.1203.

Exhibit E	Severe Accident Mitigation (SAMA) Analysis Guidance Document, Nuclear Energy Institute, November 2005
Exhibit F	NRC -Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," November 2002
Exhibit G	NRC Fact Sheet, Probabilistic Risk Assessment
Exhibit H	The American Society of Mechanical Engineers, Addenda to ASME/ANS RA-S-2008, Standard for Level 1/Large Early Release Frequency Probabilistic Risk Assessment For Nuclear Power Plant Applications
Exhibit I	NUREG/CR-2300, Probabilistic Risk Assessment Procedures Guide, January 1983
Exhibit J	NUREG/BR-0184, Regulatory Analysis Technical Evaluation Handbook, January 1997
Exhibit K	NUREG/CR-6613, SAND97/0594 Code Manual for MACCS2
Exhibit L	NUREG/CR-6853, Comparison of Average Transport and Dispersion Among A Gaussian, a Two-Dimensional and a Three Dimensional Model Lawrence Livermore National Laboratory, October 2004
Exhibit O	AERMOD Implementation Guide, USEPA January 9, 2008
Exhibit P	AERMOD: Latest Features and Evaluation Results, USEPA
Exhibit Q	A Comparison of Calpuff Modeling Results To Two Tracer Field Experiments US EPA June 1998

As we have discussed previously, the Staff had also failed to disclose a PowerPoint presentation by Mr. Stephen F. LaVie in which he identified substantial deficiencies in the ATMOS air dispersion model's ability to reliably predict air dispersion in areas of complex terrain. The documents used by the Staff in its opposition to the New York States' Summary Disposition Motion are documents "supporting the NRC Staff review," and the NUREG documents upon which NRC Staff relies are "NRC reports related to the proposed action."

The disclosure obligations imposed by 10 C.F.R. §§ 2.336(b) and 2.1203 are not limited to the license renewal portion of the Staff, or even to the licensing portion of the Staff. The obligations are imposed on "the NRC staff." *Id.* This includes not only the employees of the NRC but also its consultants. *See* 10 C.F.R. § 2.4, definition of NRC Personnel ("(2) For the purpose of §§ 2.336, 2.702, 2.709 and 2.1018 only, persons acting in the capacity of consultants to the Commission, regardless of the form of the contractual arrangements under which such persons act as consultants to the Commission."). In addition, the obligation to produce all relevant "documents" is not limited to final position papers of the agency but includes all

documents. *See* 10 C.F.R. § 2.4, definition of NRC records and documents ("NRC records and documents means any book, paper, map, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics, made by, in the possession of, or under the control of the NRC pursuant to Federal law or in connection with the transaction of public business as evidence of NRC organization, functions, policies, decisions, procedures, operations, programs or other activities. "NRC records and documents" do not include objects or articles such as structures, furniture, tangible exhibits or models, or vehicles and equipment."). Thus, for example, documents from, and in the possession of, Sandia Laboratories and from Mr. LaVie should have been disclosed to the extent they contained information relevant to the State's Contention 16.

While the State is not aware of other specific documents that are relevant to its other contentions which are in Staff's possession but which have not been disclosed by Staff, the State is concerned that the absence of the above-referenced documents from Staff's disclosures to date indicates that Staff may have also failed to disclose documents relevant to other admitted contentions. The State seeks clarification of the Staff's understanding of its discovery obligations in general as well as in relation to its contractors, as the disclosures made to date appear to be deficient under both of the regulatory provisions governing Staff's obligations. Based on Staff's response, the State will be in a better position to assess the need, if any, for a motion concerning application of certain Subpart G procedures.

Thank you for your consideration.

Sincerely,

s/

Janice A. Dean
John J. Sipos
Assistant Attorneys General

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

Attachment 14

December 31, 2009

John J. Sipos, Esq.
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New York State Department of Law
Environmental Protection Bureau
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Janice A. Dean, Esq.
Assistant Attorney General
Office of the Attorney General
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In the Matter of
ENTERGY NUCLEAR OPERATIONS, INC.
(Indian Point Nuclear Generating Units 2 and 3)
Docket Nos. 50-247-LR/286-LR

Dear Mr. Sipos and Ms. Dean:

I am writing in response to your letter to me dated October 21, 2009, in which you questioned whether certain documents should have been identified by the NRC Staff ("Staff") in its hearing file and/or mandatory disclosures in this proceeding. Specifically, you mentioned Exhibits E-L and O-Q of the "NRC Staff's Response In Opposition To State of New York's ["New York's"] Motion for Partial Summary Disposition of NYS Contention 16/16A," filed October 13, 2009 ("Answer"), and Stephen LaVie's PowerPoint presentation regarding "Dispersion" in the 2009 National Radiological Emergency Planning Conference (which was attached as Exhibit 4 to the "State of New York's Motion for Summary Disposition of Contention 16/16A" ("Motion for Partial Summary Disposition"), dated August 28, 2009.

We have reviewed each of the documents cited in your letter, and are satisfied that the Staff's document disclosure and hearing file obligations have been properly adhered to in each instance. In this regard, we note that many of the documents cited in your letter constitute regulatory guidance or other generically applicable documents, which do not relate to the Indian Point license renewal application ("LRA") and/or were not utilized by the Staff in its review of that application. More specifically, we note, in part, as follows:

Exhibits E, F, G, H, and I were not utilized in the Staff's review of the Indian Point LRA. Exhibit E is a generic guidance document issued by the Nuclear Energy Institute ("NEI"). Exhibits F, G, H, and I are generic guidance documents concerning the preparation of

Probabilistic Risk Assessments ("PRAs"); these documents provide basic information regarding PRAs, in general, and were attached to the Staff's Answer only to respond to the claims made by your Declarant, Dr. Bruce Egan, in support of your Motion for Partial Summary Disposition.

Exhibit J (NUREG/BR-0184) pertains to the preparation of PRAs and accident cost valuations); Exhibit K (NUREG/CR-6613) pertains to the MACCS2 Code. These documents were identified by the Staff in the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3," ("Draft SEIS") NUREG-1437, Supplement 38, Vols. 1 and 2. *See, e.g.*, pages 5-8, 5-12, G-4, G-27, G-28, G-29, G-31, and G-37. In addition, these documents are readily available through the NRC website, the Agencywide Documents Access and Management System ("ADAMS"), and/or the NRC's Public Document Room ("PDR").

Exhibit L (NUREG/CR-6853, the Lawrence Livermore report) constitutes a partial document, the complete version of which you had filed as Exhibit 5 in support of your Motion for Partial Summary Disposition. This document was not utilized by the Staff in its review of the Indian Point license renewal application, and was only provided to respond to the claims made by your Declarant, Dr. Bruce Egan, in support of your Motion for Partial Summary Disposition.

Exhibits O, P and Q are documents issued by the Environmental Protection Agency or units thereof, and were not utilized by the Staff in its review of the Indian Point license renewal application. These documents provide information related to AERMOD and CALPUFF (New York's preferred meteorological models), and were provided only to respond to the claims made by your Declarant, Dr. Bruce Egan, in support of your Motion for Partial Summary Disposition.

Finally, Stephen LaVie's PowerPoint presentation, which the State had filed in support of its Motion for Partial Summary Disposition, was not utilized by the Staff in its review of the Indian Point license renewal application. Moreover, as the Staff indicated in its Answer to the State's Motion, Mr. LaVie's presentation is wholly unrelated to LRA SAMA analyses.

The NRC has adopted extensive procedures to assure that members of the public and litigants in NRC proceedings are able to obtain access to documents which may be relevant to the NRC's regulatory and licensing actions. For example, the NRC publishes its regulatory guidance documents in paper and electronic format, and makes those documents available on the NRC public Web site and in the PDR. In addition, a vast array of generic and plant-specific documents may be found in ADAMS. Finally, various enumerated categories of documents related to individual licensing actions are required to be disclosed by the Staff and other parties pursuant to 10 C.F.R. § 2.336, and in the Staff's hearing file pursuant to 10 C.F.R. § 2.1203.

The Staff expends considerable effort to fulfill its mandatory disclosure and hearing file obligations in accordance with NRC regulatory requirements. Those requirements do not require the disclosure, in each individual adjudicatory proceeding, of the numerous generic regulatory guidance documents that may apply to the type of licensing action involved in the proceeding, nor is the Staff required to identify documents that are not related to the licensing action at issue in the proceeding. Such documents may be obtained through other means, including ADAMS, the NRC website, the PDR, and other sources.

Thank you for bringing your views on this matter to my attention. With best wishes for a happy, healthy and productive New Year,

Sincerely,

Sherwin E. Turk
Counsel for NRC Staff

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-247/286-LR
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO "STATE OF NEW YORK AND RIVERKEEPER MOTION TO COMPEL COMPLIANCE WITH DISCLOSURE OBLIGATIONS BY NRC STAFF," dated February 9, 2012, have been served upon the following persons by Electronic Information Exchange this 9th day of February, 2012:

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/Signed (electronically) by/

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