

**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

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| -----X<br>In re:<br><br>License Renewal Application Submitted by<br><br>Entergy Nuclear Indian Point 2, LLC,<br>Entergy Nuclear Indian Point 3, LLC, and<br>Entergy Nuclear Operations, Inc.<br>-----X | Docket Nos. 50-247-LR; 50-286-LR<br><br>ASLBP No. 07-858-03-LR-BD01<br><br>DPR-26, DPR-64<br><br>January 30, 2012 |
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**DECLARATION OF JOHN J. SIPOS**

Pursuant to 28 U.S.C. § 1746, John J. Sipos hereby declares as follows:

1. I am an Assistant Attorney General for the State of New York, counsel for petitioner-intervenor State of New York in this proceeding.
2. I make this Declaration in support of the State of New York and Riverkeeper's motion to compel disclosures by NRC Staff and compliance with NRC disclosure regulations.
3. The State of New York, Riverkeeper, and NRC Staff have a fundamental disagreement over the scope of NRC Staff's disclosures in this proceeding, a proceeding in which the Atomic Safety and Licensing Board has admitted various contentions presented by the State and Riverkeeper and in which NRC Staff has participated as a party and has actively opposed the admitted contentions.
4. On November 10, 2011, the Board admitted Joint Contention NYS-38/RK-TC-5. *Entergy Nuclear Operations, Inc.*, (Indian Point Nuclear Generating Units 2 and 3), Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) (Nov. 10, 2011) ML11314A211. That contention concerns various issues and components including aging of reactor pressure vessel and steam generator components. *Id.*; *Entergy Nuclear Operations, Inc.*,

(Indian Point Nuclear Generating Units 2 and 3), Order (Granting Entergy's Motion for Clarification of Licensing Board Memorandum and Order Admitting New Contention NYS-38/RK-TC-5) (Dec. 6, 2011) ML11340A088.

5. In November 2011, following the Board's admission of Contention NYS-38/RK-5, the State reviewed Staff's monthly mandatory disclosure update. The November 30, 2011 Staff filing disclosed only two publicly available documents (Attachment 1). Later the same day, the State inquired of Staff why certain documents that were seemingly relevant to the NYS-38/RK-5 and other admitted contentions had not been included in recent Staff disclosure updates. November 30, 2011 State letter (Attachment 2).

6. On December 30, 2011, Staff responded and set forth its position that its disclosure obligations only extended to documents that Staff used in its review of the License Renewal Application itself. December 30, 2011 NRC Staff Letter (Attachment 4). Staff stated:

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.

7. *Id.* Staff's letter makes clear that Staff does not interpret its disclosure obligations as extending to documents that oppose the requested regulatory action or are relevant to admitted contentions and does not extend to documents reviewed by third party contractors or expert witnesses working for NRC Staff in connection with admitted contentions.

8. NRC Staff's December 30, 2011 monthly mandatory disclosure update filing disclosed only two publicly available documents (Attachment 3).

9. Since the Board admitted NYS-38/RK-TC-5 on November 10, 2011, NRC Staff has

disclosed a total of four documents for which it asserted no privilege claim (Attachments 1 & 3). Those documents concerned aquatic issues (two documents) and emails to the Advisory Committee on Reactor Safeguards (two documents). Those four documents did not concern NYS-38/RK-TC-5, reactor pressure vessels, or steam generators.

10. Based on the content of the November and December 2011 Staff disclosures, the December 30, 2011 Staff letter, and discussions with Staff during January 2012, the State understands that Staff will continue to adhere to the position expressed in the December 30, 2011 Staff letter regarding the scope of its disclosure obligations.

11. NRC Staff previously expressed a similar position when the State had raised a concern about the scope of Staff's disclosures on Contention NYS-16 in 2009. October 21, 2009 State letter (Attachment 5); December 31, 2009 NRC Staff letter (Attachment 6).

12. In a memorandum dated January 10, 2012, NRC's Office of General Counsel presented its views to the NRC Commissioners about proposed revisions to NRC regulations including the Part 2 regulations (Attachment 7). The memorandum discussed Staff's disclosure obligations under 10 C.F.R. § 2.336(b). The February 28, 2011 rulemaking notice (Attachment 8) and an August 13, 2010 OGC memorandum leading up to that notice (Attachment 9) also discuss the disclosure obligations.

13. During the recent January 18, 2012 hearing, Staff indicated that its witnesses had either completed prefiled testimony or were well on the way to completing the testimony and marshalling exhibits. Transcript of ASLB Hearing and Status Conference held on January 18, 2012, at p. 1097, line 23 to p.1098, line 1 ("And although as you may expect, the Staff has prepared its testimony before receiving the intervenors' testimony, we are now adjusting that testimony to include rebuttal.")

14. Thus far in this proceeding, NRC Staff has not disclosed the identity of expert witnesses that it may rely on at the evidentiary hearing.

15. Based on NRC disclosures, the State anticipates that NRC Staff has worked with, or is working with, third party-contractors that may include Sandia National Laboratories, Pacific Northwest National Laboratories, Information Systems Laboratory (ISL), or other entities.

16. I recently learned that Idaho National Laboratories (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 in its monthly mandatory disclosure updates.

17. The Supplemental SER identified various open issues where NRC Staff is working with other third party entities -- such as, for example, the Electric Power Research Institute (EPRI) in the context of embrittlement of reactor pressure vessel internal components.

18. In response to this motion, Staff may reference NRC's Agencywide Documents Access and Management System (ADAMS). However, 10 C.F.R. §§ 2.336(b), 2.1202, 2.1203 do not say that placing a document on public ADAMS excuses Staff from disclosing a document.

19. I understand that ADAMS contains documents that are available only to NRC Staff and another (smaller) set of documents that are available to the general public and State and local governments. Specifically, within ADAMS there is the Publicly Available Records System (PARS) library that is a collection of documents available for the public.

20. I am not aware that NRC has issued a binding schedule as to when documents must be delivered to the NRC office responsible for cataloguing and uploading documents to ADAMS.

21. I am aware of instances where documents have become available on the public portion of ADAMS (PARS library) several months (or even a year or more) after the date that appears

on the document.

22. During the course of this proceeding, the platform for public ADAMS has undergone various changes and has been in a state of flux. These changes have included:

In approximately February 2010, NRC introduced ADAMS PUBLIC

In October 2010, NRC introduced an interface known as Web-based ADAMS (WBA).

In April 1, 2011, NRC decommissioned ADAMS PUBLIC (ADAMS PUBLIC/Legacy Interface Combined)

In mid-December 2011, a new searching portal was introduced. The upgraded ADAMS, went live on Monday, December 19, 2011. (ADAMS had been off line from Friday December 16 to Monday December 19.)

These changes have necessitated the State's representatives familiarizing themselves with the new search parameters, portals, or methodologies. From time to time during the course of this proceeding, public ADAMS has experienced problems that have limited or prevented its functionality.

23. Annexed hereto as Attachment 1 is a true and correct copy of NRC Staff's November 30, 2011 mandatory disclosure update ML11334A171.

24. Annexed hereto as Attachment 2 is a true and correct copy of the State's November 30, 2011 letter to NRC Staff inquiring about the scope of Staff's mandatory disclosures.

25. Annexed hereto as Attachment 3 is a true and correct copy of NRC Staff's December 30, 2011 mandatory disclosure update ML11364A101.

26. Annexed hereto as Attachment 4 is a true and correct copy of NRC Staff's December 30, 2011 letter responding to the State's November 30, 2011 inquiry about the scope of Staff's disclosures.

27. Annexed hereto as Attachment 5 is a true and correct copy of an October 21, 2009 letter from the State to NRC Staff.

28. Annexed hereto as Attachment 6 is a true and correct copy of a December 31, 2009 letter from NRC Staff letter responding to the October 21, 2009 letter.

29. Annexed hereto as Attachment 7 is a true and correct copy of a 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 from NRC's Office of General Counsel to the NRC Commissioners ML12010A063.

30. Annexed hereto as Attachment 8 is a true and correct copy of a notice that appeared in the Federal Register at 76 Fed. Reg. 10781 (Feb. 28, 2011), entitled Amendments to Adjudicatory Process Rules and Related Requirements, Proposed Rules (“Proposed Rule”).

31. Annexed hereto as Attachment 9 is a true and correct copy of SECY-10-0106, Proposed Rule—10 CFR Parts 2, 51, and 54 “Amendments to Adjudicatory Process Rules and Related Requirements” (RIN 3150-AI43)) August 13, 2010 ML102250347.

32. Annexed hereto as Attachment 10 is a true and correct copy of an excerpt of the federal government’s brief dated July 14, 2004 and submitted to the U.S. Court of Appeals for the First Circuit in *Citizens Action Network Inc. v. United States*, (1<sup>st</sup> Cir. Docket No. 04-1145) ML041980581.

33. I declare under penalty of perjury that the foregoing is true and correct.

***Signed (electronically) by***

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John J. Sipos  
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Executed on January 30, 2012.