

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

-----X

In re:	Docket Nos. 50-247-LR; 50-286-LR
License Renewal Application Submitted by	ASLBP No. 07-858-03-LR-BD01
Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc.	DPR-26, DPR-64 February 9, 2012

-----X

**STATE OF NEW YORK RESPONSE TO
BOARD'S REQUEST FOR INFORMATION**

The State of New York respectfully submits the following in response to the Atomic Safety and Licensing Board's February 3, 2012 Order (¶ 2) directing the parties to inform the Board of matters that have the potential to affect the schedule of this proceeding.

1. Scope of NRC Staff disclosures. The State and Riverkeeper filed a joint motion to compel compliance with the Part 2 disclosure regulations in connection with the recently-admitted Contention NYS-38/RK-TC-5. Should the ASLB grant the intervenors' motion, the State anticipates that Staff would make additional disclosures.
2. Potential Staff issuance of Information Requests and Supplemental SER. On January 27, 2012, Staff disclosed that it has had discussions with Entergy about the developing a proposed aging management programs for IP2 and IP3's reactor pressure vessel internals, which, in turn, could implicate Contention NYS-25. January 27, 2012 NRC Staff letter (ADAMS ML not yet available). Entergy may submit additional information concerning internal components of the reactor pressure vessels on February 17, 2012. *Id.* at 1. NRC Staff stated:

“The Staff currently expects that it may need to issue requests for additional information (‘RAIs’) to the Applicant following the Staff’s receipt of the Applicant’s February 17 submittal, and that the Staff’s review of this matter may be the subject of a Supplement to the Safety Evaluation Report for the Indian Point license renewal application.”

Id. This could also affect Contention NYS-38/RK-TC-5, which is presently deferred.

3. Staff issuance of Supplemental EIS. On November 30 and December 6, 2011

Staff discussed its intention to prepare a supplemental EIS.

“[T]he staff anticipates filing a supplemental SEIS, which would address the NMFS Biological Opinion [concerning shortnose sturgeon], as well as some other aquatic impact information that the staff receives. . . . That includes entrainment, impingement and thermal impacts, and it affects the endangered or threatened species, which are the subject of the NMFS Biological Opinion.”

December 6, 2011 Transcript (Tr.) at 1010 (ML11346A011). Staff indicated that it expected to issue the draft supplemental EIS for public comment in May 2012. November 30, 2011 NRC Staff letter (ML11334A166). Staff also indicated that the final supplemental EIS could follow in a minimum of six to seven months, possibly more, depending on the scope and number of comments. Tr. at 1011. As discussed on previous occasions, the State notes that the National Environmental Policy Act, CEQ regulations, and NRC regulations precludes final federal agency action until an environmental impact statement process is complete. *See, e.g.*, 10 C.F.R. § 51.104; 40 C.F.R. § 1506.1.

4. State Permits. The Indian Point facilities must obtain a State-issued permit for the intake and discharge of water pursuant to the Clean Water Act and the New York State Environmental Conservation Law and a State-issued certification pursuant to the Clean Water Act § 401 before NRC may issue operating licenses authorizing the operation of Indian Point Unit 2 and Indian Point Unit 3 beyond their initial 40-year term. As the Board is aware, the State has denied Indian Point’s request for a Clean Water Act § 401 certification. In addition, Indian

Point must receive a consistency determination from the State pursuant to the Coastal Zone Management Act before NRC may issue operating licenses authorizing the operation of Indian Point Unit 2 and Indian Point Unit 3 beyond their initial 40-year term.

5. Advisory Committee on Reactor Safeguards. As noted by the State during the December 6, 2011 ASLB conference, the ACRS has indicated an interest to review Indian Point matters, which could include license renewal issues. (On December 30, 2011 the Staff disclosed two documents that indicated the ACRS continued to consider convening an Indian Point meeting as of early December.) The State understands the Board's position that, absent further action by the parties, such a potential meeting would not necessarily impact the hearing schedule.

Respectfully submitted,

Signed (electronically) by

John J. Sipos
Assistant Attorney General
Office of the Attorney General
of the State of New York
The Capitol
Albany, New York 12224
(518) 402-2251

Dated: February 9, 2012