



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

July 6, 2012

Lawrence G. McDade
Chair and Administrative Judge

Richard E. Wardwell
Administrative Judge

Michael F. Kennedy
Administrative Judge

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mailstop 3 F23
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Re: 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 Chairman McDade, Judge Wardwell, and Judge Kennedy:

The State submits this response to NRC Staff's Statement in Response to the Atomic Safety and Licensing Board's Order of June 7, 2012, filed June 18, 2012 ("Staff Response"). In particular, the State wishes to submit its objection to two of Staff's positions.

In its order dated June 7, the Board asked Staff in Question No. 1 why it intends to publish the Draft Supplemental Final Environmental Impact Statement ("DFSEIS") and make the document available for public comment in July 2012, when consultations with the National Marine Fisheries Service ("NMFS") will not be completed until August 14, 2012 and a Biological Opinion will not be released until September 28, 2012. *See* Order (Ordering the NRC Staff to Address Board Questions) (June 7, 2012). Staff responded that it is aware of no reason why the draft FSEIS supplement should be withheld to await the conclusion of its consultations with NMFS. Staff Response at 3. The State submits that, notwithstanding Staff's arguments, the Board should require Staff to fully complete its consultations and obtain all necessary federal agency approvals before submitting the Draft Supplemental FEIS for public comment, and that full public participation cannot be achieved without Staff's inclusion of NMFS' opinions in the DSFEIS. Staff's proposed schedule renders public participation moot, as the document the public will be reviewing will change after their review.

Secondly, as to the Board's Question No. 3 concerning Staff's submission of a revised Supplemental Safety Evaluation Report ("SSER") in August, Staff's most recent status report indicates that the SSER is anticipated to be filed December 28, 2012. NRC Staff's Fifth Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (July 2, 2012) at 2, ¶ 2. Staff notes that Entergy stated that it will not even submit its complete responses to RAIs by September 28, 2012. *Id.*

Finally, as the State has noted in the past, the National Environmental Policy Act, Council on Environmental Quality regulations, and NRC regulations preclude 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.

Sincerely,

Signed (electronically) by

Janice A. Dean
Assistant Attorney General
(212) 416-8459
janice.dean@ag.ny.gov