

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Michael F. Kennedy
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

April 24, 2015

ORDER

(Granting New York's Motion for Leave to File Reply)

On April 9, 2015, the State of New York (New York) filed a motion to withdraw the proprietary designation and compel the public disclosure of five documents produced by Entergy Nuclear Operations, Inc. (Entergy) as part of its mandatory disclosures.¹ Entergy opposes the motion and argues that public disclosure of these documents would cause substantial commercial harm.² The NRC Staff takes no position, but filed an answer concerning

¹ State of New York Motion to Withdraw the Proprietary Designation of Various Pressurized Water Reactor Owners' Group and Westinghouse Documents (Apr. 9, 2015) (hereinafter New York Motion). The documents include a memorandum prepared by the Pressurized Water Reactor Owners Group (PWROG) and four calculation notes prepared by Westinghouse Electric Company LLC (Westinghouse), Entergy's vendor. *Id.* at 1.

² Entergy's Answer Opposing New York State's Motion to Strike Proprietary Designations at 15-18 (Apr. 20, 2015) (hereinafter Entergy Answer). As support for maintaining the proprietary designations, Entergy attached two affidavits and a declaration to its answer. Entergy Answer, attach. 1, Aff. of Anthony Nowinowski (Apr. 20, 2015); Entergy Answer, attach. 2, Aff. of James A. Gresham (Apr. 16, 2015); Entergy Answer, attach. 3, Decl. of Mark A. Gray (Apr. 20, 2015).

the applicable legal principles governing the protection of proprietary documents.³ Riverkeeper and Clearwater support the motion,⁴ but did not file an answer. On April 22, 2015, New York sought leave from the Board to file a reply to Entergy's Answer as, according to New York, it could not have reasonably anticipated the arguments advanced by Entergy and contained in the supporting affidavits.⁵ Entergy filed an answer opposing New York's Motion for Leave to File a Reply, asserting that the parties have been discussing the proprietary designation issue for nearly six weeks and that New York had already received the information and arguments set forth in the PWROG and Westinghouse affidavits and Entergy's April 20th Answer.⁶

Pursuant to 10 C.F.R § 2.323(c), "[t]he moving party has no right to reply, except as permitted" and permission is appropriate only in "compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated arguments to which it seeks leave to reply." Similarly, the Board's July 1, 2010 Scheduling Order specifies that a motion to file a reply must demonstrate good cause.⁷

The Board finds that good cause exists for New York to file a reply. New York has demonstrated that they endeavored to understand Entergy and Westinghouse's bases for the proprietary designation of the documents.⁸ Entergy offered little explanation⁹ such that New

³ NRC Staff's Answer to "State of New York Motion to Withdraw the Proprietary Designation of Various Pressurized Water Reactor Owners' Group and Westinghouse Documents" (Apr. 20, 2015).

⁴ New York Motion at 2.

⁵ State of New York Motion for Leave to File Reply in Support of Motion to Withdraw Proprietary Designations (Apr. 22, 2015).

⁶ Entergy's Answer Opposing New York State's Motion for Leave to File a Reply to Entergy's April 20, 2015 Answer at 4-5 (Apr. 23, 2015).

⁷ Licensing Board (Scheduling Order) at 7 (July 1, 2010) (unpublished).

⁸ See New York Motion, attach. 1, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

York could not have reasonably anticipated the more detailed arguments advanced by Entergy in its answer and affidavits. Accordingly, New York's motion for leave to file a reply to Entergy's Answer is granted and any reply filed by New York must be filed no later than close of business May 1, 2015.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 24, 2015

⁹ See New York Motion, attach. 7, [REDACTED]
[REDACTED]
[REDACTED]

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NUCLEAR REGULATORY COMMISSION

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(Indian Point Nuclear Generating,)	
Units 2 and 3))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Redacted Order (Granting New York's Motion for Leave to File Reply)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Herald M. Speiser ____]
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Dated at Rockville, Maryland
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