

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

December 8, 2016

ORDER

(Requesting Updated Information on Pending Litigation and Other Matters)

Given the duration of this proceeding and the number of outside issues that potentially could impact relicensing, the Board directs the parties to provide updated information on pending or anticipated matters that they believe could impact the relicensing of Indian Point Units 2 and 3.

For example, on November 21, 2016, the State of New York (New York or State) notified the Board by letter that the New York State Court of Appeals had issued a decision in a case concerning Entergy Nuclear Operations, Inc.'s (Entergy's) claim that its application for operating licenses for Units 2 and 3 is exempt from consistency review with New York's Coastal Management Plan (CMP).¹ The Court of Appeals ruled in favor of the State, upholding as

¹ Letter from John J. Sipos, New York, to ASLB, 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 (Nov. 21, 2016).

reasonable the New York State Department of State's (NYSDOS') interpretation of its CMP that Entergy's renewal application is subject to consistency review.²

Entergy may, within 60 days of the above mentioned Court of Appeals decision, appeal the NYSDOS consistency determination to the U.S. Department of Commerce (by January 20, 2017).³ With the Court of Appeals decision rendered, the Board requests updated information regarding how, in the opinion of the parties, this decision could impact the relicensing of Indian Point Units 2 and 3 and the proceeding before the Board.

Specifically, the Board requests information regarding whether and, if so, under what circumstances the Commission could issue license renewals for Indian Point without a favorable ruling for Entergy from the Secretary of Commerce. Entergy shall also provide an estimate when a decision from Commerce would be forthcoming. Entergy should also describe what actions it would need to take in order to comply with New York's CMP if a favorable decision from Commerce is not received, and provide an estimate of how long such actions would take.

Additionally, Entergy filed a case in the U.S. District Court for the Northern District of New York against the New York Secretary of State (Case 1:16-cv-00051-LEKDJS).⁴ That case challenges the NYSDOS consistency determination on the grounds that it was based on nuclear safety concerns and alleges an intrusion on the Atomic Energy Act's exclusive grant of authority over nuclear safety to the NRC.⁵ The Board requests updated information on the status of that

² Entergy Nuclear Operations, Inc. v. New York State Department of State, No. 179, slip. op. at 2 (N.Y. Nov. 21, 2016).

³ NRC Staff's 49th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (Mar. 1, 2016) at 6 (citing Letter from Cesar A. Perales, Secretary of State, NYSDOS, to Fred Dacimo, Entergy (Nov. 6, 2015)).

⁴ Id.

⁵ Id.

proceeding and an assessment of the impact of a favorable or unfavorable ruling given the Court of Appeals decision referenced above.

The parties shall describe the impact of these proceedings on the proceeding before this Board, particularly as to how they may impact the resolution of any pending contention, or how they may result in potential new contentions.

We also request the parties to provide similar information in reference to any and all other permits, approvals, or licenses (e.g., water permits) that could potentially affect relicensing, lead to additional contentions, or delay the resolution of this proceeding.

The Board directs Entergy to file a report on these issues no later than 5:00 PM EST on December 21, 2016.⁶ The NRC Staff shall then provide any additions or objections to Entergy's report no later than 5:00 PM EST on January 6, 2017. Intervenors shall then provide their additions or objections to the reports by Entergy and the Staff no later than 5:00 PM EST on January 19, 2017.⁷

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 8, 2016

⁶ If Entergy needs additional time to prepare this report, it shall request an extension no later than December 15, 2016.

⁷ The Staff is also directed to correct erroneous dates in its monthly status report. Specifically, the Board granted New York's Motion on February 19, 2016, not 2019. Also, New York is to file reply testimony by January 17, 2017, not 2016.

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Requesting Updated Information on Pending Litigation and Other Matters)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara Sola ____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 8th day of December 2016