

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	July 6, 2012

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**ENTERGY’S MOTION IN LIMINE TO EXCLUDE PORTIONS OF INTERVENORS’  
PREFILED DIRECT TESTIMONY, EXPERT REPORT, STATEMENT OF POSITION,  
AND EXHIBITS FOR CONTENTION NYS-38/RK-TC-5 (SAFETY COMMITMENTS)**

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**I. INTRODUCTION**

On June 19, 2012, New York State (“NYS”) and Riverkeeper, Inc. (“Riverkeeper”) (jointly, “Intervenors”) submitted their prefiled written testimony and other related submissions concerning Contention NYS-38/RK-TC-5 (“Safety Commitments”). This contention challenges the adequacy of four Entergy commitments that are described and approved by the Nuclear Regulatory Commission (“NRC” or “Commission”) Staff in its August 2011 Supplemental Safety Evaluation Report (“SSER”).<sup>1</sup>

In accordance with 10 C.F.R. §§ 2.1204, 2.319, 2.323, 2.337, and the Atomic Safety and Licensing Board’s (“Board”) Scheduling Order of July 1, 2010, Entergy Nuclear Operations, Inc. (“Entergy”) hereby timely moves to exclude portions of: (1) the Prefiled Testimony of Dr. David J. Duquette Regarding NYS-38/RK-TC-5 (NYS000372) (“Duquette Testimony”); (2) the Report of Dr. David J. Duquette Regarding NYS-38/RK-TC-5 (NYS000373) (“Duquette Report”); (3) the Prefiled Written Testimony of Dr. Richard T. Lahey, Jr. Regarding NYS-38/RK-TC-5 (NYS000374) (“Lahey Testimony”); (4) the State of New York and Riverkeeper Initial Statement

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<sup>1</sup> NUREG-1930, Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Supp. 1 (Aug. 2011) (“SSER”).

of Position in Support of Joint Contention NYS-38/RK-TC-5 (NYS000371) (“Intervenors’ Position Statement”); and (5) several other supporting exhibits.<sup>2</sup>

Intervenors’ prefiled testimony and other submittals challenge—for the first time—the adequacy of Commitment 42 concerning Entergy’s analysis or inspections of steam generator tube-to-tubesheet welds. The basis for excluding such challenges is clear and compelling. The Commission recently held that an admitted contention is defined by its stated bases, and that licensing boards must “specify each basis relied upon for admitting a contention.”<sup>3</sup> When this Board admitted NYS-38/RK-TC-5, it identified four specific bases and stated: “We view the Intervenors’ *targeted criticism of Entergy’s recently modified commitments*, as described in the SSER, as becoming the ‘reasonably apparent’ foundation for the contention.”<sup>4</sup> As discussed below, those four specific bases correspond to four specific Entergy commitments—Commitments 30, 41, 43, and 44.

When, as in this case, “a question arises over the scope of an admitted contention, the Board or Commission will refer back to the bases set forth in support of the contention.”<sup>5</sup> Unlike their testimony, Intervenors’ original contention and its supporting bases never challenged *Commitment 42*, which provides for future analyses or inspections of steam generator tube-to-tubesheet welds. Nor did the Board admit such a challenge in its November 10, 2011 Order.

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<sup>2</sup> Attachment 1 to this Motion identifies the specific documents or portions thereof that Entergy seeks to exclude from the record.

<sup>3</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 NRC \_\_ slip op. at 11 n.50 (Mar. 8, 2012).

<sup>4</sup> Licensing Board Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) at 9-10 (Nov. 10, 2011) (unpublished) (“November 10, 2011 Order”) (emphasis added) (citation omitted).

<sup>5</sup> *Entergy Nuclear Operations Co.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC 479, 482 (June 17, 2010).

Indeed, Intervenor's original contention and the Board's admissibility ruling contain no references at all to Commitment 42 or tube-to-tubesheet welds.<sup>6</sup>

Accordingly, pursuant to 10 C.F.R. §§ 2.319(d) and 2.337(a), the Board should exclude those portions of Intervenor's prefiled written testimony that belatedly challenge the adequacy of Commitment 42, or that otherwise are irrelevant to the contention as pled and admitted.

## **II. LEGAL STANDARDS**

NRC regulations governing the admissibility of evidence provide that "[o]nly relevant, material, and reliable evidence . . . will be admitted. Immaterial and irrelevant parts of an admissible document will be segregated and excluded so far as is practicable."<sup>7</sup> Thus, pursuant to 10 C.F.R. § 2.319(d), the Board may "strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative," and under Section 2.319(e), the Board may restrict evidence or arguments for the same reasons.

Because only relevant and material evidence is admissible, the Board may exclude or accord no weight to testimony and exhibits that are outside the admitted contention's scope or that raise issues that were not properly raised in earlier pleadings.<sup>8</sup> Thus, the Board may strike prefiled testimony that introduces new bases for a contention.<sup>9</sup>

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<sup>6</sup> Commitment 41, which Intervenor's now appear to conflate with Commitment 42, is a separate commitment that relates specifically to future inspections of the Indian Point steam generator *divider plate assemblies* for PWSCC indications.

<sup>7</sup> 10 C.F.R. § 2.337(a).

<sup>8</sup> See, e.g., Licensing Board Order (Granting in Part and Denying in Part Applicant's Motions *in Limine*) (Mar. 6, 2012) (unpublished) (granting in part and denying in part Entergy's motions to exclude testimony and exhibits) ("Board March 6, 2012 Motion in Limine Rulings"); *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Licensing Board Memorandum and Order (Ruling on In Limine Motions) at 3-7 (Jan. 26, 2009) (unpublished) (granting in part motion to exclude testimony and exhibits outside the scope of the admitted contentions); *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), Licensing Board Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification) at 1-2 (Aug. 9, 2007) ("Oyster Creek Ruling on Motions in Limine") (unpublished) (granting in part motion to exclude evidence on topics outside scope of contention and license renewal proceeding).

<sup>9</sup> *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) ("New bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due,

Recent Commission decisions hold that Intervenorors are not permitted to change the scope of a contention as admitted by the Board. In the *Vogtle* proceeding, the Commission upheld a Board ruling excluding testimony at hearing that strayed beyond the scope of the bases as pled and admitted, which “defined the scope of the . . . contention.”<sup>10</sup> The Commission emphasized that the scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases.<sup>11</sup>

Similarly, in *Pilgrim*, the Commission reiterated that longstanding precedent requires a Board to look back at the bases to determine the scope of a contention, because the “reach of a contention necessarily hinges upon its terms *coupled* with its stated bases.”<sup>12</sup> A key reason for this requirement is to provide notice to the opposing parties of the issues they will need to defend against.<sup>13</sup> Because of this principle:

Intervenorors therefore may not “freely change the focus of an admitted contention at will” to add a host of new issues and objections that could have been raised at the outset. Where warranted we allow for amendment of admitted contentions, but do not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their *reasonably inferred* bounds.<sup>14</sup>

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unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2).”); *see also Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station, CLI-10-11, 71 NRC 287, 309 (2010)).

<sup>10</sup> *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 101 (2010). Thus, to the extent Intervenorors may seek to argue, based on *Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 147 (2006) and *La. Energy Servs., L.P.* (Nat’l Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004), that it may freely add bases after the contention pleading stage, the Board should reject this argument. These rulings interpreted the contention admissibility rule, not the question of whether testimony at hearing that strayed beyond the stated bases of an admitted contention was admissible.

<sup>11</sup> *Vogtle*, CLI-10-5, 71 NRC at 100.

<sup>12</sup> *Pilgrim*, CLI-10-11, 71 NRC at 309 (emphasis added) (*citing Pub. Serv. Co. of N. H.* (Seabrook Station, Units 1 & 2), ALAB-899, 28 NRC 93, 97 (1988)).

<sup>13</sup> *See Pilgrim*, CLI-10-11, 71 NRC at 309.

<sup>14</sup> *Id.* (emphasis added) (citations omitted); *see also* Board March 6, 2012 Motion in Limine Rulings at 4, 6-7, 10, 23, 28-29.

Although this Board previously stated that licensing boards “admit contentions, not bases,”<sup>15</sup> subsequently, the Commission has squarely rejected that view: “Contrary to the Board’s statement, an admitted contention *is defined by its bases*.”<sup>16</sup> The Commission accordingly reminded licensing boards “of the need to *specify each basis relied upon* for admitting a contention.”<sup>17</sup>

### **III. ARGUMENT**

The portions of the Duquette Testimony, Duquette Report, Lahey Testimony, Intervenors’ Position Statement, and exhibits identified in Attachment 1 should be excluded from the evidentiary record as inadmissible because they are outside the scope of this contention. Specifically, they stray beyond the contention’s bases as pled by Intervenors and specified by the Board.

#### **A. The Scope of the Admitted Contention Does Not Include a Challenge to Entergy’s Commitment 42**

As filed by Intervenors on September 30, 2011, NYS-38/RK-TC-5 alleges that Entergy:

is not in compliance with the requirements of 10 C.F.R. §§ 54.21(a)(3) and (c)(1)(iii) and the requirements of 42 U.S.C. §§ 2133(b) and (d) and 2232(a) because Entergy does not demonstrate that it has a program that will manage the affects [sic] of aging of several critical components or systems and thus NRC does not have a record and a rational basis upon which it can determine whether to grant a renewed license to Entergy as required by the Administrative Procedure Act.<sup>18</sup>

On November 10, 2011, the Board admitted the contention, stating that Intervenors contend that “Entergy’s new *commitments* do not meet NRC regulations for having a program that

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<sup>15</sup> Board March 6, 2012 Motion In Limine Rulings at 6-7.

<sup>16</sup> *Seabrook*, CLI-12-05, slip op. at 11 n.50 (emphasis added) (citation omitted).

<sup>17</sup> *Id.*

<sup>18</sup> State of New York and Riverkeeper’s New Joint Contention NYS-38/RK-TC-5 at 1 (Sept. 30, 2011) (“Contention NYS-38/RK-TC-5”).

will adequately manage the effects of aging during the period of extended operations.”<sup>19</sup> In admitting the contention, the Board specified the four bases of the contention, as pled by NYS and Riverkeeper in their September 30, 2011 submittal, that Entergy:

- (1) [H]as deferred defining the methods used for determining the most limiting locations for metal fatigue calculations and the selection of those locations;
- (2) has not specified the criteria it will use and assumptions upon which it will rely for modifying the WESTEMS<sup>TM</sup> computer model for environmentally adjusted cumulative usage factors (CUF<sub>en</sub>) calculations;
- (3) has not adequately defined how it will manage primary water stress corrosion cracking (PWSCC) because it will not begin inspections until after entering the period of extended operations and Entergy has substituted a document, which will not be released until 2013, for its prior water chemistry program to manage PWSCC of the nickel alloy or nickel-alloy clad *steam generator divider plates* exposed to reactor coolant; and
- (4) does not adequately describe the contents of its AMP for reactor vessel internals, based on a revised version of the Materials Reliability Program 227 (MRP-227) guidance document.<sup>20</sup>

In a subsequent Order, the Board discussed its admission of the contention. Notably, the Board stated that “[u]nder the umbrella of this general contention, the Intervenor has proffered several *specific bases* in support of their allegations.”<sup>21</sup> In a footnote, the Board again identified the four specific bases identified in its November 10, 2011 Order.<sup>22</sup> In fact, the Board quoted the paragraph excerpted above almost verbatim and expressly cited both footnote 47 of its November 11, 2012 Order and pages 1 to 3 of the contention.<sup>23</sup>

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<sup>19</sup> November 10, 2011 Order at 10 (emphasis added).

<sup>20</sup> *Id.* at 10-11 n.47 (*citing* Contention NYS-38/RK-TC-5 at 1-3) (emphasis added).

<sup>21</sup> Licensing Board Order (Denying NRC Staff’s Motion for Partial Reconsideration and State of New York/Riverkeeper’s Cross-Motion to NRC Staff’s Motion for Reconsideration) at 3 (Apr. 23, 2012) (unpublished) (“April 23, 2012 Order”) (emphasis added) (citation omitted).

<sup>22</sup> *Id.* n.7.

<sup>23</sup> *Id.*

Importantly, the four bases of the contention enumerated by the Board challenge four specific Entergy commitments. Bases (1) and (2) challenge commitments that support Entergy’s Fatigue Monitoring Program. Specifically, Basis (1) relates to Commitment 43 in the Indian Point license renewal application (“LRA”), in which Entergy committed to review its design basis fatigue evaluations to determine whether the previously analyzed component locations are the limiting locations for the Indian Point plant designs.<sup>24</sup> Basis (2) addresses Commitment 44 in the LRA, in which Entergy committed to document any “user intervention” in future WESTEMS™ fatigue evaluations for Indian Point.<sup>25</sup> Basis (3) relates to Commitment 41, in which Entergy committed to inspect the Indian Point steam generator divider plates for indications of PWSCC.<sup>26</sup> And Basis (4) relates to Commitment 30 in Entergy’s original LRA, wherein Entergy committed to manage aging effects on reactor vessel internals by participating in industry programs on this issue and to evaluate and implement the results of those programs, as approved by the NRC.<sup>27</sup>

Significantly, *none* of the four bases—as pled by the Intervenor or recited by the Board in its Orders—mentions Entergy’s Commitment 42, which provides for future analyses or inspections of steam generator tube-to-tubesheet welds.<sup>28</sup> Indeed, Intervenor’s proposed contention and supporting bases as well as the Board’s related Orders are silent on this issue and contain no reference to Commitment 42.<sup>29</sup>

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<sup>24</sup> See Contention NYS-38/RK-TC-5 at 1-2 ((citing SSER at 4-2) (discussing Commitment 43)).

<sup>25</sup> See *id.* at 2 (citing SSER at 4-2 to -3 (discussing Commitment 44)).

<sup>26</sup> See *id.* at 2 (citing SSER at 3-18 to -19 (discussing Commitment 41)).

<sup>27</sup> See *id.* at 2-3.

<sup>28</sup> See SSER at 3-21 to -23, A-23 to -24. The Intervenor’s description of Basis (4) incorrectly cites some of these pages in the SSER. See Contention NYS-38/RK-TC-5 at 2. However, Intervenor’s error cannot be construed to expand the scope of the contention as pled and admitted.

<sup>29</sup> One of the State’s experts, Dr. Lahey, mentions inspections of steam generator tube-to-tubesheet welds in his 2011 declaration. See Declaration of Dr. Richard T. Lahey, Jr. ¶ 6 (Sept. 30, 2011) (NYS000302). But Intervenor did not mention this issue in Contention NYS-38/RK-TC-5, nor did they include it in their description of the contention’s bases. Although Entergy explicitly noted this fact in its opposition to Contention NYS-38/RK-TC-5, Intervenor said nothing further on the issue in their subsequent reply. See Applicant’s



In short, Intervenor’s pleadings and the Board’s Orders clearly defined the scope of the admitted contention. Intervenor’s prefiled testimony and associated submittals impermissibly challenge—for the first time—the adequacy of Commitment 42 and Entergy’s approach, as embodied therein, to addressing potential PWSCC in steam generator tube-to-tubesheet welds. As demonstrated more specifically below, because those challenges are outside the scope of the contention as pled and admitted, they should be stricken.

**B. Challenges to Entergy’s Commitment 42 Should Be Stricken**

Pursuant to 10 C.F.R. §§ 2.319(d) and 2.337(a), the Board should exclude those portions of Dr. Duquette’s Testimony and Report, as well as Dr. Lahey’s Testimony, that challenge the adequacy of Commitment 42. They are irrelevant to the contention as pled and admitted by the Board. Controlling Commission precedent supports this conclusion. The Commission has long emphasized that petitioners must set forth their contentions “with particularity.”<sup>30</sup> It also has observed that “NRC adjudicatory proceedings would prove endless if parties were free . . . to introduce entirely new claims which they either originally opted not to make or which simply did not occur to them at the outset.”<sup>31</sup>

Here, Intervenor could have challenged Commitment 42 and the associated inspection or analysis of the tube-to-tubesheet welds in their original contention. But they did not do so, even

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Opposition to New York State’s and Riverkeeper’s Joint Motion to Admit New Contention NYS-38/RK-TC-5 at 24 n.94 (Oct. 25, 2011) (“Dr. Lahey’s reference to inspections of SG tube-to-tubesheet welds in paragraph 6 of his declaration relates to an entirely separate matter that is not even mentioned in the New Contention.”).

<sup>30</sup> *Pilgrim*, CLI-10-15, slip op. at 4. As the Commission further explained:

The scope of a contention is limited to issues of law and fact *pled with particularity in the intervention petition, including its stated bases*, unless the contention is satisfactorily amended in accordance with our rules. . . . Parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing. Our procedural rules are designed to ensure focused and fair proceedings.

*Id.* (emphasis added).

<sup>31</sup> *Pilgrim*, CLI-10-11, 71 NRC at 311 (quoting *La. Energy Servs., L.P.* (Nat’l Enrichment Facility), CLI-05-28, 62 NRC 721, 727-28 (2005)).

though the NRC Staff explicitly discussed those subjects in its SSER—*i.e.*, the impetus for the contention.<sup>32</sup> Intervenors’ new challenge to Commitment 42, therefore, is beyond the scope of the admitted contention’s reasonably-inferred bounds.<sup>33</sup> Accordingly, any testimony or statements that challenge the adequacy of Entergy’s Commitment 42 are inadmissible in this proceeding and should be accordingly stricken.

Intervenors’ belated attempt to expand the contention’s scope is evident from the restatement of the contention and supporting bases included in their Position Statement.<sup>34</sup> In ostensibly restating the third stated basis of the contention (concerning Commitment 41 and Entergy’s planned steam generator divider plate inspections), Intervenors add two entirely *new* sentences concerning tube-to-tubesheet welds and Commitment 42:

Entergy and NRC Staff have also acknowledged a concern with the steam generator tubesheet cladding and the propagation of primary water stress corrosion cracking to the tube-to-tubesheet welds. SSER at 3-20 to 3-23. Entergy proposes to “develop a plan” to address this issue but the plan lacks detail and will not be developed until well into the period of extended operations. SSER at 3-22 to 3-23.<sup>35</sup>

These sentences do not appear in Intervenors’ original proposed contention,<sup>36</sup> or in the Board’s description of the “specific bases” proffered by Intervenors in support of that contention.<sup>37</sup> The belated addition of these new issues is an impermissible attempt to amend the contention that contravenes the Commission precedent discussed above, this Board’s careful enumeration of the contested issues, and basic fairness principles.

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<sup>32</sup> See SSER at 3-21 to 3-23 (discussing Commitment 42 and finding it to be acceptable).

<sup>33</sup> Board March 6, 2012 Motion in Limine Rulings at 29.

<sup>34</sup> See Intervenors’ Position Statement at 2-3.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> Contention NYS-38/RK-TC-5 at 2.

<sup>37</sup> April 23, 2012 Order at 3 & n.7.

1. Dr. Duquette's Testimony and Report

Dr. Duquette's direct testimony and other statements concerning the adequacy of Commitment 42 should be excluded as irrelevant under 10 C.F.R. §§ 2.319(d) and 2.337(a). In his Testimony and Report Testimony, Dr. Duquette (a newly-identified witness with respect to the contention) challenges the adequacy of Entergy Commitment 42 and discusses at length the issue of PWSCC in steam generator tube-to-tubesheet welds. Among other things, Dr. Duquette states Entergy's proposal for managing the aging effect of PWSCC-related cracking in steam generator tube-to-tubesheet welds is not an aging management program but rather a "wait and see placeholder proposal."<sup>38</sup> This testimony is inadmissible and should be excluded.

2. Dr. Lahey's Testimony

For the same reasons, Dr. Lahey's direct testimony concerning the adequacy of Commitment 42 also should be excluded as irrelevant under 10 C.F.R. §§ 2.319(d) and 2.337(a). For example, Dr. Lahey discusses cracking in tube-to-tubesheet welds and criticizes Entergy's approach for managing that potential aging effect, as set forth in Commitment 42, as vague, conceptual, and "short on details."<sup>39</sup> Like Dr. Duquette's testimony and report, Dr. Lahey's testimony raises issues that are outside the scope of the admitted contention and thus inadmissible.

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<sup>38</sup> Duquette Testimony at 29 (internal quotation marks omitted). Dr. Duquette's testimony also appears to presume that the activities to be conducted under Commitment 42 are intended to address the same NRC Staff concerns that led to Commitment 41—the potential propagation of PWSCC from the divider plate to the tube-to-tubesheet welds. *See id.* at 24 ("Did Entergy make any proposals with respect to Staff concern about the propagation of [PWSCC?]"). Contention NYS-38/RK-TC-5, however, focuses on the adequacy of specific new commitments in the SSER. *See* November 10, 2011 Order at 10 (referring to Intervenor's "targeted criticism of Entergy's recently modified commitments"). Therefore, the contention is not a general challenge to other, unspecified, aging management activities, and a newly-alleged factual connection to other commitments does not bring those other commitments within the "reasonably inferred" bounds of NYS-38/RK-TC-5. *See* Board March 6, 2012 Motion in Limine Rulings at 29. Moreover, Entergy is *not* seeking to strike all references to tube-to-tubesheet weld issues, but only statements that challenge the adequacy of Commitment 42.

<sup>39</sup> Lahey Testimony at 21-22. Dr. Lahey also appears to presume that Commitment 42 addresses the same NRC Staff concern as Commitment 41. *See id.* at 21 ("Turning to the issue of cracks spreading from tubesheet cladding to tube-to-tubesheet welds . . ."). But again, Intervenor's presumed factual connection between Commitment 41 and Commitment 42 is not sufficient to bring the latter within the scope of the admitted contention and its four specified bases. As explained above, Contention NYS-38/RK-TC-5, as defined by its stated bases, challenges four Entergy commitments, and Commitment 42 is not one of them.

### 3. Intervenors' Position Statement

As previously noted, Intervenors' Position Statement also discusses Commitment 42 and the issue of cracking in tube-to-tubesheet welds.<sup>40</sup> Those statements are not evidence in this proceeding,<sup>41</sup> but nevertheless may be subject to a motion in limine or to strike.<sup>42</sup> Therefore, to the extent the Board grants this Motion and excludes evidence identified in Attachment 1 to this Motion, the associated discussions in the Position Statement should be accorded no weight in the Board's merits decision on NYS-38/RK-TC-5.

### C. Exhibits RIV000103 through RIV000106 Should be Excluded as Irrelevant

Riverkeeper Exhibits RIV000103,<sup>43</sup> RIV000104,<sup>44</sup> RIV000105,<sup>45</sup> and RIV000106<sup>46</sup> should be excluded from the record as irrelevant under 10 C.F.R. §§ 2.319(d) and 2.337(a). Dr. Hopenfeld briefly discusses these documents on pages 3-4 of his prefiled testimony as putative support for expert qualifications. The documents have no apparent nexus to the issues admitted for hearing in this contention, and instead speak to Dr. Hopenfeld's purported expertise on unrelated issues, such as leak detection systems and tube degradation in a newly-installed steam generator at another facility. Similarly, Dr. Hopenfeld's differing professional opinion of more

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<sup>40</sup> See Intervenors' Position Statement at 3, 6-9, 14, 16.

<sup>41</sup> See *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), Memorandum and Order (Hearing Directives) at 2 n.2 (Sept. 12, 2007) (unpublished). This Board has noted that a position statement is a party's legal interpretation of its evidence, not its actual evidence, and that the Board will use it inasmuch it is supported by the evidence proffered by that party. See Board March 6, 2012 Motion in Limine Rulings at 24.

<sup>42</sup> See *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification) at 1-2 (Aug. 9, 2007) (unpublished); *Entergy Nuclear Vt. Yankee* (Vt. Yankee Nuclear Power Station), Order (Rulings on Motions to Strike and Motions in Limine) at 2-3 (July 16, 2008) (unpublished).

<sup>43</sup> J. Hopenfeld et al., *Small Sodium to Gas Leak Behavior in Relation to LMFBR Leak Detection*, Int'l Conference on Liquid Metal Tech. (May 1976).

<sup>44</sup> Memorandum from S. Collins (RES) to W. Travers (EDO), "Steam Generator Action Plan Revision to Address Differing Professional Opinion on Steam Generator Tube Integrity (WITS ITEM 200100026)" (May 11, 2001).

<sup>45</sup> NUREG-1740, Voltage-Based Alternative Repair Criteria, A Report to the Advisory Committee on Reactor Safeguards by the Ad Hoc Subcommittee on a Differing Professional Opinion (Mar. 2001).

<sup>46</sup> Associated Press, *Nuke inspectors focus on 'unusual' wear on tubes*, Fox News.com (Feb. 3, 2012).

than a decade ago on topics unrelated to the commitments at issue in this contention is irrelevant. Thus, the identified exhibits appear to be extraneous to the contested issues and should be excluded from the evidentiary record.

#### IV. CONCLUSION

For the foregoing reasons, the Board should exclude from the record the portions of the Intervenor's prefiled Testimony, Report, and Position Statement identified in Attachment 1 as well as Exhibits RIV000103, RIV000104, RIV000105, and RIV000106 .

Respectfully submitted,

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*Counsel for Entergy Nuclear Operations, Inc.*

Dated in Washington, D.C.  
this 6th day of July 2012

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	July 6, 2012

**MOTION CERTIFICATION**

Pursuant to 10 C.F.R. § 2.323(b), counsel for Entergy certifies that he made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues, and he certifies that his efforts have been unsuccessful. The NRC Staff supports this Motion with respect to the issues related to Commitment 42, but takes no position on the issue of the Riverkeeper exhibits. NYS and Riverkeeper oppose the motion.

*Signed (electronically) by Raphael P. Kuyler*

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**ENTERGY'S MOTION IN LIMINE FOR  
NYS-38/RK-TC-5  
ATTACHMENT 1**

Exclusion Chart

**Entergy Attachment 1 to Entergy's Motion in Limine to Exclude Portions of Intervenor's  
Pre-Filed Direct Testimony, Expert Report, Exhibits, and Statement of Position for  
Contention NYS-28/RK TC-5 (Safety Commitments)**

Location of Information to Be Stricken	Basis for Exclusion
<b>Duquette Testimony (NYS000372)</b>	
Page 20, lines 10-11: strike “and 3-20 to 3-23”	Testimony challenging the adequacy of Entergy Commitment 42 is outside the scope of the contention as both pled by Intervenor and admitted by the Board.
Page 20, lines 12-13, strike: “and the tube-to-tubesheet welds”	
Page 24, lines 17-23, strike: all	
Page 25, lines 1-22, strike: all	
Page 28, line 11, strike: “tubesheets, and welds”	
Page 28, line 19, strike: “tubesheets, and welds”	
<b>Duquette Report (NYS000373)</b>	
Pages 13-14, strike: all text under and including the header “Tube-to-Tubesheet Welds,” and through the last sentence ending in “this section of the RAI is resolved.”	Statements challenging the adequacy of Entergy Commitment 42 are outside the scope of the contention as both pled by Intervenor and admitted by the Board.
Page 16, strike: “At this time, Entergy admits that it does not know the susceptibility of the tube-to-tubesheet welds to PWSCC and is proposing to either perform an analysis of the susceptibility of the welds to PWSCC or to perform an undisclosed number of inspections within an extended period of time. Further, the specific nature of these inspections has not been revealed by Entergy.	
PWSCC initiation in the tube-to-tubesheet welds may lead to a rapid compromise of the pressure boundary with subsequent mixing of primary water with secondary water.”	
Page 20, strike:  “3. Develop an analytical evaluation of the steam generator tube-to-tubesheet welds to determine a technical basis for determining if they are susceptible to PWSCC.  “4. Develop a specific time sensitive program of a significant number of tube-to-tubesheet welds to determine if they are susceptible to PWSCC.  ***	



Location of Information to Be Stricken	Basis for Exclusion
“6. Develop an ongoing monitoring program to perform routine inspections of tube-to-tubesheet weld inspections.”	
<b>Lahey Testimony (NYS000374)</b>	
Page 11, lines 3-20, strike: all	Testimony challenging the adequacy of Entergy Commitment 42 is outside the scope of the contention as both pled by Intervenor and admitted by the Board.
Page 21, lines 20-23 through Page 22, lines 1-15, strike: all	
<b>State of New York &amp; Riverkeeper, Inc’s Position Statement (NYSR00371)</b>	
Page 3, paragraph c., accord no weight to the following:  “Entergy and NRC Staff have also acknowledged a concern with the steam generator tubesheet cladding and the propagation of primary water stress corrosion cracking to the tube-to-tubesheet welds. SSER at 3-20 to 3-23. Entergy proposes to “develop a plan” to address this issue but the plan lacks detail and will not be developed until well into the period of extended operations. SSER at 3-22 to 3-23.”	Statements challenging the adequacy of Entergy Commitment 42 are outside the scope of the contention as both pled by Intervenor and admitted by the Board.
Page 7, line 19, strike: “tubesheets, and welds”	
Page 8, line 1, strike: “tubesheets, and welds”	
Page 8, line 12: “tubesheets, and welds”	
Page 14, line 3, strike: “tubesheets, and tube-to-tubesheet welds”	
Page 14, line 14, strike: “tubesheets, and tube-to-tubesheet welds”	
Page 14, lines 18-19, strike: “tubesheets, and tube-to-tubesheet welds”	
<b>Riverkeeper Exhibits to be Excluded</b>	
<b>RIV000103</b> , J. Hopenfeld, et al., Small Sodium to Gas Leak Behavior in Relation to LMFBR Leak Detection, International Conference on Liquid Metal Technology (May 1976)	Exhibits are not relevant to the issues raised in NYS-38/RK-TC-5 and admitted by the Board for hearing.
<b>RIV000104</b> , Memorandum from S. Collins (RES) to W. Travers (EDO), “Steam Generator Action Plan Revision to Address Differing Professional	

Location of Information to Be Stricken	Basis for Exclusion
Opinion on Steam Generator Tube Integrity (WITS ITEM 200100026)” (May 11, 2011)	
<b>RIV000105</b> , NUREG-1740, “Voltage-Based Alternative Repair Criteria, A Report to the Advisory Committee on Reactor Safeguards by the Ad Hoc Subcommittee on a Differing Professional Opinion” (March/Feb. 2001), page 5	
<b>RIV000106</b> , Associated Press, “Nuke inspectors focus on ‘unusual’ wear on tubes,” Fox News.com, February 3, 2012	

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	July 6, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2012, a copy of the “Entergy’s Motion in Limine to Exclude Portions of Intervenors’ Prefiled Direct Testimony, Expert Report, Exhibits, and Statement of Position for Contention NYS-38/RK-TC-5 (Safety Commitments)” was served electronically via the Electronic Information Exchange on the following recipients.

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