

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

August 16, 2012

ORDER

(Denying Entergy's Motion in Limine Seeking to Exclude Portions of Intervenor's Direct Evidence Addressing Contention NYS-38/RK-TC-5)

On November 10, 2011, the Board admitted Contention NYS-38/RK-TC-5 (NYS-38), which arose from the issuance of the August 2011 Supplement to the NRC Staff's Safety Evaluation Report (SSER), and challenged the adequacy of Entergy's Aging Management Programs (AMPs) for several safety-related components.¹ More specifically, this contention alleged that, rather than presenting existing plans for review, Entergy's commitment to the future development of certain AMPs failed to satisfy the requirements of 10 C.F.R. §§ 54.21(a)(3) and (c)(1)(iii), and 42 U.S.C. §§ 2133(b) and (d) and 2232(a).²

¹ Licensing Board Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) (Nov. 10, 2011) at 1–2, 12 (unpublished).

² See id. at 2.

Intervenors New York and Riverkeeper filed their NYS-38 Initial Statement of Position, direct testimony, and corresponding exhibits on June 19, 2012.³ In response, Entergy filed a motion in limine to exclude portions of this Statement of Position, direct testimony, and exhibits.⁴ That motion is the subject of this Order.

In its motion, Entergy argues that “Intervenors’ prefiled [NYS-38] testimony and other submittals challenge—for the first time—the adequacy of [Entergy’s] Commitment 42[as set forth in the SSER] concerning Entergy’s analysis or inspections of steam generator tube-to-tubesheet welds.”⁵ According to Entergy, Commitment 42 is outside the four specifically admitted bases for NYS-38, which correspond directly to Entergy Commitments 30, 41, 43, and 44.⁶ Thus, Entergy seeks to exclude the portions of Intervenors’ NYS-38 direct testimony and corresponding submittals that address Commitment 42 because, according to Entergy, these portions of the testimony and corresponding submittals are “irrelevant to the contention as pled and admitted.”⁷

Intervenors New York and Riverkeeper oppose Entergy’s motion in limine by arguing that “Entergy’s [motion] is factually in error because the scope of NYS-38 . . . encompasses all the proposed plans to address cracking in the steam generator that may cause cracks in safety related components where Entergy is not now providing the details of its proposed

³ See Revised Certificates of Service (June 20, 2012) (certifying that John J. Sipos served copies of the State of New York and Riverkeeper’s Initial Statement of Position in Support of Contention NYS-38/RK-TC-5, the Pre-filed Testimony of Drs. David J. Duquette and Richard Lahey, the Report of Dr. David J. Duquette, and Exhibits NYS000375 through NYS00397 on June 19, 2012).

⁴ See 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) (July 6, 2012).

⁵ Id. at 2.

⁶ See id.

⁷ Id. at 3.

approaches.”⁸ These Intervenors further argue that Entergy’s motion in limine essentially ignores the Board’s December 6, 2011, Clarification Order, which elucidates that NYS-38 is a broad challenge to Entergy’s Commitments—delineated in the SSER—and thus is not limited specific commitments.⁹

We agree with New York and Riverkeeper. On November 21, 2011, Entergy moved for clarification regarding the scope of NYS-38.¹⁰ Through this motion for clarification, Entergy sought to limit the scope of NYS-38 to Applicant’s Commitment 41, which does not encompass the potential aging effect of primary stress corrosion cracking in steam generator divider plate assemblies.¹¹

On December 6, 2011, we issued an Order resolving Entergy’s Motion for Clarification, in which we did not limit the scope of NYS-38 to Entergy’s Commitment 41.¹² Instead we found that “[t]he language of our November 10, 2011 Memorandum and Order did not limit NYS-38/RK-TC-5 solely to Commitment 41. Rather, in finding [NYS-38] admissible, we admitted the Intervenors’ ‘broad’ contention, which relied on ‘multiple bases’ including the ‘claim that there is insufficient information in Entergy’s recent commitments’ that were addressed in the SSER.”¹³

Entergy’s current motion in limine once again attempts to limit the scope of NYS-38. In denying this motion we reiterate that NYS-38 is a broad contention, the scope of which is not

⁸ State of New York and Riverkeeper’s Joint Answer to 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 (July 16, 2012) at 4.

⁹ See id. at 3–4.

¹⁰ See Licensing Board Order (Granting Entergy’s Motion for Clarification of Licensing Board Memorandum and Order Admitting Contention NYS-38/RK-TC-5)(Dec. 6, 2011) at 1 (unpublished) (citing Applicant’s Motion for Clarification of Licensing Board Memorandum and Order Admitting Contention NYS-38/RK-TC-5 (Nov. 21, 2011) at 1–4).

¹¹ See id. at 2.

¹² See id. at 3.

¹³ Id.

limited to Entergy Commitments 30, 41, 43, and 44. Instead it broadly encompasses the claim that there is insufficient information in Entergy's Commitments as addressed in the SSER. Accordingly, Entergy's instant Motion in limine is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 16, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying Entergy's Motion in Limine to Exclude Portions of Intervenor's Direct Evidence Addressing Contention NYS-38/RK-TC-5)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Christine M. Pierpoint]
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Dated at Rockville, Maryland
this 16th day of August 2012