

January 2, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S 23RD STATUS REPORT
IN RESPONSE TO THE ATOMIC SAFETY AND
LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012

In accordance with the Atomic Safety and Licensing Board's ("Board") "Order (Granting NRC Staff's Unopposed Time Extension Motion and Directing Filing of Status Updates)" ("Order"), issued on February 16, 2012, the NRC Staff ("Staff") herewith provides its 23rd monthly status report to the Board.

1. Endangered Species. As stated in the Staff's previous status reports,¹ Contention RK-EC-8 challenges the Staff's issuance of its Final Supplemental Environmental Impact Statement ("FSEIS") related to license renewal of Indian Point Units 2 and 3 ("IP2" and "IP3"),² prior to completing its consultations with the National Marine Fisheries Service ("NMFS") under Section 7 of the Endangered Species Act ("ESA"). On January 30, 2013, NMFS issued a final Biological Opinion for endangered species in the vicinity of IP2 and IP3, and in June 2013, the Staff issued a Supplement (Volume 4) to the FSEIS, in which it described the completion of its consultation process with NMFS and incorporated NMFS's views in its

¹ See, e.g., "NRC Staff's 22nd Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (Dec. 2, 2013) ("22nd Status Report"), at 1.

² "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Units Nos. 2 and 3," NUREG-1437, Supp. 38, Vol. 4 (June 2013).

evaluation of the impacts of license renewal on endangered and threatened species under the National Environmental Policy Act of 1969 ("NEPA").

On July 17, 2013, Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") filed a motion to dismiss Contention RK-EC-8 as moot;³ answers to the Applicant's motion were filed by the Staff and Riverkeeper on August 6 and August 20, 2013, respectively. On August 20, 2013, Riverkeeper filed a motion seeking to amend Contention RK-EC-8, which it filed along with Amended Contention RK-EC-8A.⁴ Answers to Riverkeeper's motion were filed by the Staff and Applicant on October 1, 2013, to which Riverkeeper replied on October 8, 2013. A Board decision on Entergy's and Riverkeeper's motions is pending.

2. SER Supplement 2. As stated previously,⁵ the Staff plans to issue Supplement 2 to its Safety Evaluation Report ("SER") related to license renewal of IP2/IP3, in which it will address information provided in the Applicant's responses to Staff requests for additional information ("RAIs") following the issuance of SER Supplement 1; this will include information concerning the Applicant's Reactor Vessel Internals ("RVI") Aging Management Program and Inspection Plan ("AMP"), as well as changes made to the LRA since the issuance of SER Supplement 1.⁶ The Staff issued additional RAIs concerning RVI and other issues this past fall. The Staff's RAIs on RVI issues were transmitted to the Applicant on November 19, 2013; additional RAIs on other issues may be forthcoming. The Applicant's responses to the

³ "Entergy Motion to Dismiss Riverkeeper Contention RK-EC-8 (Endangered and Threatened Aquatic Species) as Moot" (July 17, 2013).

⁴ "Riverkeeper, Inc. Consolidated Motion for Leave to File Amended Contention RK-EC-8A and Amended Contention RK-EC-8A" (Aug. 20, 2013).

⁵ See, e.g., 22nd Status Report, at 2.

⁶ Following the Staff's issuance of SER Supplement 1, the Applicant revised its LRA and/or RAI responses in various areas, including (a) the One-Time Inspection and Selective Leaching programs; (b) the Metal Enclosed Bus Inspection program; (c) the IP2 Auxiliary Feedwater Pump Room Fire Event; (d) the Buried and Underground Piping and Tanks Inspection program; (e) RVI issues; and (f) other matters identified in the Applicant's annual LRA updates.

RAIs on RVI issues are expected in mid-January 2013. The Staff currently anticipates that SER Supplement 2 will likely be issued in mid-2014. The Staff will provide further information to the Board regarding this matter as it becomes available.

3. Track 2 Safety Issues. As stated previously,⁷ the Staff believes that hearings on Track 2 safety issues related to the Applicant's RVI aging management program (Contentions NYS-25 and portions of NYS-38/ RK-TC-5) should be deferred until the Staff has completed its evaluation of this matter. In addition, to promote efficiency and conservation of resources, and to assure there is no overlap in the issues or testimony, the Staff believes that evidentiary hearings on the remaining Track 2 safety issues (Contentions NYS-26B/RK-TC-1B and remaining portions of NYS-38/RK-TC-5) should be deferred to coincide with hearings on Contention NYS-25 and RVI-related portions of Contention NYS-38/RK-TC-5.

4. Waste Confidence. As the Staff noted previously,⁸ the Commission has undertaken further consideration of its "Waste Confidence Decision," and has stated that it "will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand [in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)] is appropriately addressed."⁹ Following issuance of the Court of Appeals' decision, the Intervenor in this proceeding filed new contentions related to waste storage and/or disposal, to which the Applicant and Staff responded on August 2 and 3, 2012, respectively. On August 8,

⁷ See, e.g., 22nd Status Report, at 3.

⁸ *Id.*

⁹ *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (Aug. 7, 2012).

2012, the Board ordered that all other pleadings concerning these proposed contentions be held in abeyance, pending further order.¹⁰

On August 5, 2013, the Commission issued a Staff Requirements Memorandum (“SRM”), directing the Staff to publish a proposed rule and draft environmental impact statement (“EIS”) on waste confidence issues. In accordance with that SRM, on September 13, 2013, the Staff published a proposed rule and notice of availability of a draft EIS on waste confidence issues.¹¹ As stated in the *Federal Register* Notices, comments on the proposed rule and draft EIS were required to be filed by December 20, 2013.¹² The Staff will provide further information concerning this matter when available.

5. CZMA Issues. On June 12, 2013, the Board denied the Applicant’s and New York’s motions seeking the entry of a declaratory order regarding the need for a review of the IP2/IP3 LRA to determine its consistency with the New York State Coastal Management Program pursuant to the Coastal Zone Management Act (“CZMA”).¹³ As noted in the Board’s decision, no consultation had yet been held between the Staff, New York and Entergy, pursuant to 15 C.F.R. § 930.51(e); the Board left open the possibility that the motions might be re-filed after such consultation occurs. The Staff has initiated consultations with the New York State

¹⁰ “Order (Holding Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4 in Abeyance)” (Aug. 8, 2012). The Commission has similarly held such contentions in abeyance in other proceedings. See *Calvert Cliffs*, *supra*, 76 NRC at 68-69.

¹¹ See (1) Proposed Rule, “Waste Confidence – Continued Storage of Spent Nuclear Fuel,” 78 Fed. Reg. 56,776 (Sept. 13, 2013); (2) “Draft Waste Confidence Generic Environmental Impact Statement,” 78 Fed. Reg. 56,621 (Sept. 13, 2013).

¹² Proposed Rule; Extension of Comment Period; “Waste Confidence--Continued Storage of Spent Nuclear Fuel,” 78 Fed. Reg. 66,858 (Nov. 7, 2013).

¹³ “Order (Granting New York’s Motions, Denying Clearwater’s Motion, and Denying CZMA Motions)” (June 12, 2013). In its Order, the Board ruled that its “denial of Entergy’s and New York’s motions does not trigger the time for filing new contentions.” *Id.* at 4 n.16, *citing* “Order (Granting State of New York Motion for Extension of Time to File New Contentions)” (Aug. 31, 2012) (requiring the filing of new contentions on Entergy’s LRA amendment regarding the need for a CZMA consistency determination within 30 days after the Board rules on Entergy’s motion).

Department of State (“NYSDOS”),¹⁴ and expects to continue this consultation with New York and Entergy in the near future. The Staff will provide further information to the Board regarding this issue when available.

6. Contention NYS-35/36. As also stated previously,¹⁵ on May 7, 2013, the Applicant notified the Board that it had submitted to the Staff the results of its completed engineering project cost estimates for Severe Accident Mitigation Alternatives (“SAMAs”) which it had previously identified as potentially cost-beneficial.¹⁶ In its Board notification, the Applicant noted, *inter alia*, that it was submitting the new information “to support resolution of certain issues identified by the Board in its July 14, 2011 decision granting New York’s motion for summary disposition of Consolidated Contention NYS-35/36 [LBP-11-17, 74 NRC 11 (2011)].”¹⁷ The Applicant’s submittal thus has the potential to affect litigation of Contention NYS 35/36.

On July 9, 2013, the Board ruled that “adjudicatory submissions based on NL-13-075 [Entergy’s letter of May 6, 2013] are due no later than 60 days after the Staff issues its draft FSEIS supplement or an equivalent document discussing its review of NL-13-075, or alternatively, no later than 60 days after the NRC Staff notifies the parties that it will not issue a written evaluation of NL-13-075 in any form.”¹⁸ The Staff is reviewing the Applicant’s new project cost information and expects to complete its evaluation in mid-2014; the Staff has not yet decided whether it will present its evaluation of that information in an FSEIS Supplement or

¹⁴ See Letter from Sherwin E. Turk to the Board (Dec. 12, 2013), transmitting letter from David J. Wrona (NRC) to George Stafford (NYSDOS) (Dec. 6, 2013).

¹⁵ See, e.g., 22nd Status Report, at 5.

¹⁶ See Letter from Kathryn M. Sutton, Esq., *et al.*, to the Board (May 7, 2013), attaching Letter from Fred Dacimo (Entergy) to the NRC Document Control Desk, NL-13-075 (May 6, 2013) (ADAMS Accession No. ML13142A014).

¹⁷ *Id.* at 1 and 2.

¹⁸ “Order (Granting Entergy’s Motion [for] Clarification)” (July 9, 2013), at 2.

in some other document. The Staff will provide further information to the Board regarding this issue when available.

7. Track 1 Contentions. On November 27, 2013, the Board issued its Partial Initial Decision ("PID") resolving the nine safety and environmental Track1 contentions.¹⁹ In accordance with 10 C.F.R. § 2.341(b)(1) and the Commission's Order of December 18, 2013 (granting the parties' joint motion for an extension of time), any petitions for Commission review of the Board's PID are due on or before February 14, 2014.

8. Contention NYS-12C (SAMAs). On December 7, 2013, New York filed a motion for reconsideration and to reopen the record on Contention NYS-12C (SAMAs), to consider information concerning an analysis conducted by the NRC's Office of Nuclear Regulatory Research of a severe spent fuel pool accident, in connection with the Staff's recently published "Consequence Study of a Beyond-Design Basis Earthquake Affecting the Spent Fuel Pool for a Mark I Boiling Water Reactor."²⁰ Answers to New York's motion were filed by Entergy and the Staff on December 23, 2013.²¹ In accordance with the Board's "Order (Granting New York's Motion for an Extension of Time)," issued on December 31, 2013, any motion by New York for leave to reply is due on or before January 8, 2013.

9. Contention NYS-37 (No-Action Alternative). On November 27, 2013, the Board issued an Order denying New York's motion of November 25, 2013, in which New York had sought the admission of a recent Order by the New York State Public Service Commission

¹⁹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC ____ (Nov. 27, 2013) (slip op.)

²⁰ "State of New York Motion to Reopen the Record and for Reconsideration on Contention NYS-12C" (Dec. 7, 2013).

²¹ "Entergy's Answer Opposing State of New York Motion to Reopen the Record and for Reconsideration of Contention NYS 12C" (Dec. 23, 2013); "NRC Staff's Response to State of New York Motion to Reopen the Record and for Reconsideration on Contention NYS 12C" (Dec. 23, 2013).

(“PSC”), as a new exhibit on Contention NYS-37 (No-Action Alternative).²² In its Order of November 27, the Board, *inter alia*, directed the Staff to “report to the Board within 45 days . . . whether it will supplement the FSEIS pursuant to [10 C.F.R.] Section 51.92(a)(2) and, if so, . . . [to] provide a realistic estimate of when any such draft SEIS will issue.” Order at 2. In addition, the Board directed New York “to delay the filing of any new contention based on the PSC Order or the information contained therein until further Order of this Board which will await the submission of the Staff’s Report;” finally, the Board indicated that if a new contention regarding the PSC Order is admitted, it is the Board’s intent to “establish an expedited schedule so that it could be resolved with the pending Track 2 contentions.” *Id.* at 3.

On December 20, 2013, the Staff filed its response to the Board’s Order, in which the Staff provided its evaluation of the information contained in the PSC Order and stated that it will not issue an FSEIS supplement to address that information.²³ In accordance with the Board’s Order of November 27, at 2, the Staff understands that any new contentions concerning this matter have been deferred to await the issuance of a further Board Order.

10. UFSAR Revision and LRA Update. On September 26, 2013, the Applicant submitted a letter to the NRC, in which it revised the Indian Point Unit 2 (“IP2”) Updated Final Safety Analysis Report (“UFSAR”) to incorporate provisions contained in Appendix A (UFSAR Supplement) of the IP2 LRA, in accordance with a commitment stated in Entergy’s letter of May 1, 2013 (NL-13-071).²⁴ Also on September 26, 2013, the Applicant submitted Amendment

²² “Order (Denying New York’s Motion)” (Nov. 27, 2013).

²³ “NRC Staff’s Response to the Atomic Safety and Licensing Board’s Order of November 27, 2013 (Denying New York’s Motion)” (Dec. 20, 2013).

²⁴ See Letter from F. Dacimo, Entergy, to NRC Document Control Desk, “Indian Point Energy Center Letters to NRC, License Renewal Application, dated April 23, 2007,” NL-13-130 (Sept. 26, 2013) (ADAMS Accession No. ML13269A452).

No. 14 to its LRA, amending certain aspects of the IP2 LRA.²⁵ That information is currently being reviewed by the Staff.

11. The Staff is not currently aware of any other matter that has the potential to impact the schedule for hearings in this proceeding. In accordance with the Board's direction (Order, at 2), the Staff will notify the Board as soon as any other event with potential to alter the hearing schedule arises.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 2nd day of January 2014

²⁵ See Letter from F. Dacimo, Entergy, to NRC Document Control Desk, "Amendment 14 to License Renewal Application," NL-13-131 (Sept. 26, 2013) (ADAMS Accession No. ML13269A452).

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S 23RD STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated January 2, 2014, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 2nd day of January, 2014.

/Signed (electronically) by/

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