

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 1, 2014

ORDER

(Denying New York's Motion to Reopen the Record;  
Setting Deadline for New or Amended Contention)

I. Responding to Motion to Reopen the Record – New York Contention 12-C

On December 7, 2013, the State of New York (New York) filed a motion to Reopen the Record and for the Reconsideration of Contention NYS-12C.<sup>1</sup> Subsequently, Entergy Nuclear Operations, Inc. (Entergy) and the NRC Staff filed answers opposing New York's motion.<sup>2</sup> The Board granted New York's Motion for Leave to File a Reply,<sup>3</sup> and New York filed its reply in support of its motion on January 22, 2014.<sup>4</sup> For the reasons discussed below, we deny New York's Motion to Reopen the Record and for the Reconsideration of Contention NYS-12C.

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<sup>1</sup> See State of New York Motion to Reopen the Record and for Reconsideration on Contention NYS-12C (Dec. 7, 2013) [hereinafter New York Motion to Reopen].

<sup>2</sup> See 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) [hereinafter Entergy Answer].

<sup>3</sup> See Licensing Board Order (Granting New York's Motion) (Jan. 14, 2014) (unpublished).

<sup>4</sup> State of New York Reply in Support of Motion to Reopen the Record and for Reconsideration of Contention NYS-12C (Jan. 22, 2014).

To reopen the record of this closed proceeding, a movant must show that its motion is timely; that it addresses a significant safety or environmental issue; and that a materially different result would be or would have been likely had the newly-proffered evidence been considered initially.<sup>5</sup> The moving party has an “elevated burden to lay a proper foundation for its claim”<sup>6</sup> based on “relevant, material, and reliable” evidence.<sup>7</sup> Parties seeking reconsideration of board orders “must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid.”<sup>8</sup> The compelling circumstances standard for granting leave to file a motion for reconsideration “is intended to permit reconsideration only where manifest injustice would occur in the absence of reconsideration, and the claim could not have been raised earlier.”<sup>9</sup>

While the Board finds that New York’s motion addressed a significant issue, New York did not provide sufficient information to establish that a different result would have been likely had the Board considered the new information proffered by New York when assessing the reasonableness of the TIMDEC input values accepted by the Staff in the Indian Point SAMA analysis.

Specifically, New York has asserted that the Board should reconsider its recent ruling in light of the fact that NRC Staff used a TIMDEC input value of 365 days in a MACCS2 analysis of a severe accident at a spent fuel pool.<sup>10</sup> New York argued that the use of a 365-day TIMDEC is

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<sup>5</sup> 10 C.F.R. § 2.326(a).

<sup>6</sup> Private Fuel Storage, L.L.C. (Indep. Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005).

<sup>7</sup> 10 C.F.R. § 2.337(a).

<sup>8</sup> Id. § 2.345(b).

<sup>9</sup> Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2207 (Jan. 14, 2004).

<sup>10</sup> See New York Motion to Reopen.

contrary to the position taken by the NRC Staff and Entergy before the Board in this proceeding that the NRC Staff had consistently accepted TIMDEC inputs of 60 days and 120 days for the last 30 years.<sup>11</sup> But, as the Applicant and the NRC Staff point out, these representations made before and during the hearing on NYS-12C refer to analyses of numerous failure scenarios performed for license renewal applications, and that the use of the longer duration for decontamination was utilized as a site specific value for a specific postulated spent fuel pool accident.<sup>12</sup>

We find New York's explanation insufficient to show that the NRC Staff's acceptance of TIMDEC inputs of 60 days and 120 days for the Indian Point SAMA was not reasonable. Thus, it is unlikely that the Board would reach a materially different result given the information provided by New York and, accordingly, this motion does not meet the requirements for a contention to be reopened.

## II. Permitting New York to File New Contention

On November 25, 2013, New York filed a motion seeking leave to submit a recently-issued ruling by the New York State Public Service Commission (PSC Order) as an exhibit in connection with contention NYS-37.<sup>13</sup> The Board denied this motion as premature until the Staff determines whether to supplement the FSEIS to address this issue, and directed New York to delay the filing of any new or amended contention based on the PSC Order, or the information contained therein until further Order of this Board.<sup>14</sup> On December 20, 2013, the NRC Staff filed

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<sup>11</sup> Id. at 1.

<sup>12</sup> See Entergy Answer at 14; NRC Staff's Answer to State of New York Motion for Leave to File Reply on Motion to Reopen the Record and for Reconsideration of Contention NYS-12C (Jan. 9, 2014).

<sup>13</sup> State of New York Motion for Leave to Submit Recently-Issued Ruling by New York State Public Service Commission as an Additional Exhibit Concerning Contention NYS-37 (Nov. 25, 2013).

<sup>14</sup> Licensing Board Order (Denying New York's Motion) at 2 (Nov. 27, 2013) (unpublished).

its response to the Board's Order, in which the NRC 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.<sup>15</sup>

Because the NRC Staff has chosen not to issue an FSEIS supplement to address the information in the PSC Order, New York's request is ripe and the Board will permit New York to file a new or amended contention based on this information within 30 days of the issuance of this order.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 1, 2014

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<sup>15</sup> 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).

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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 New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell ]  
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