

April 1, 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 26th 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 26th monthly status report to the Board.

Safety Issues

1. SER Supplement 2. As stated previously,¹ 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

¹ See "NRC Staff's 25th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (Mar. 4, 2014) ("25th Status Report") at 2.

of SER Supplement 1.² The Staff's RAIs on RVI issues were transmitted to the Applicant on November 19, 2013; the Applicant submitted its responses to those RAIs on January 16, 2014.³ The Staff expects to issue additional RAIs on RVI issues shortly, and currently expects to issue SER Supplement 2 in mid-2014. The Staff will provide further information to the Board regarding this matter as it becomes available.

2. Track 2 Safety Issues. There has been no change in this item since the Staff filed its previous status report. As stated previously,⁴ 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.

3. UFSAR Revision and LRA Update. There has been no change in this item since the Staff filed its previous status report. As stated previously,⁵ 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

² 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.

³ Letter from Fred Dacimo (Entergy) to NRC Document Control Desk (Jan. 16, 2014) (ADAMS Accession No. ML14027A413).

⁴ See 25th Status Report, at 3.

⁵ *Id.*, at 8-9.

Entergy's letter of May 1, 2013 (NL-13-071).⁶ Also on September 26, 2013, the Applicant submitted Amendment No. 14 to its LRA, amending certain aspects of the IP2 LRA.⁷ That information is currently being reviewed by the Staff.

Environmental Issues

4. Endangered Species. On April 1, 2014, the Board granted the Applicant's motion to dismiss Contention RK-EC-8 (Endangered Species) as moot, and denied Riverkeeper's motion to admit Amended Contention RK-EC-8A.⁸

5. Waste Confidence. As the Staff noted previously,⁹ 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."¹⁰ 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, 2012, the Board ordered that all other pleadings concerning these proposed contentions be held in abeyance, pending further order.¹¹

⁶ 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).

⁷ 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).

⁸ "Order (Denying Riverkeeper's Motion and Granting Entergy's Motion Addressing RK-EC-8A)" (Apr. 1, 2014).

⁹ See 25th Status Report, at 3-4.

¹⁰ *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).

¹¹ "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.

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.¹² Numerous comments were submitted regarding the proposed rule and draft EIS, pursuant to the *Federal Register* Notices.¹³ The Staff continues to expect that this rulemaking process will conclude in October 2014. The Staff will provide further information concerning this matter when available.

6. Suspension Petition. On February 27, 2014, Clearwater (and other petitioners) filed a petition before the Commission, seeking to suspend reactor licensing and “re-licensing” decisions in this and 11 other NRC proceedings, pending the completion of a requested rulemaking proceeding on spent fuel pool issues;¹⁴ answers opposing the suspension petition were filed by Entergy and the Staff on March 21, 2014. A Commission decision on the suspension petition is pending.

7. CZMA Issues. There has been no change in this item since the Staff filed its previous status report.¹⁵ 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

¹² 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).

¹³ Proposed Rule; Extension of Comment Period; “Waste Confidence--Continued Storage of Spent Nuclear Fuel,” 78 Fed. Reg. 66,858 (Nov. 7, 2013).

¹⁴ “Petition to Suspend Reactor Licensing Decisions and Reactor Re-Licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures” (Feb. 27, 2014).

¹⁵ See 25th Status Report at 4-5.

pursuant to the Coastal Zone Management Act ("CZMA").¹⁶ As the Board noted, consultations had not 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 consultation occurs.¹⁷ The Staff has initiated consultations with the New York State Department of State ("NYSDOS"),¹⁸ and expects to continue those consultations with NYSDOS and Entergy in the near future.¹⁹ The Staff will provide further information to the Board regarding this issue when available.

8. Contention NYS-35/36. On July 14, 2011, the Board issued LBP-11-17, granting summary disposition on Contention NYS-35/36 (Cost-Beneficial SAMAs) in favor of New York.²⁰ On February 14, 2014, the Applicant and Staff filed petitions for Commission review of that

¹⁶ "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013).

¹⁷ In its Order of June 12, 2013, 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).

¹⁸ 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) (ADAMS Accession No. ML13281A065); Letter from George R Stafford (NYSDOS) to David J. Wrona (NRC) (Jan. 6, 2014) (ADAMS Accession No. ML14028A209).

¹⁹ New York has indicated that it plans to submit a further response to the Staff's letter of December 6, 2013, that will address the six questions posed in the Staff's letter. See (1) "Summary of Phone Call Between [NYSDOS] and [NRC] on January 13, 2014" (Feb. 19, 2014) (ADAMS Accession No. ML14024A372); (2) Letter from David J. Wrona (NRC) to George Stafford (NYSDOS) ("Consistency of the Indian Point Nuclear Generating Unit Nos. 2 and 3 License Renewal Application with New York State Coastal Management Program") (Mar. 4, 2014) (ADAMS Accession No. ML14024A064).

²⁰ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-11-17, 74 NRC 11, *petition for interlocutory review denied*, CLI-11-14, 74 NRC 801 (2011).

decision;²¹ New York filed an answer opposing those petitions on March 25, 2014; replies are due on April 9, 2014.²²

As stated previously,²³ on May 7, 2013, the Applicant notified the Board that it had submitted a letter to the Staff (NL-13-075), reporting the results of its completed engineering project cost estimates for Severe Accident Mitigation Alternatives (“SAMAs”) that were previously identified as potentially cost-beneficial.²⁴ In its notification, the Applicant noted, *inter alia*, that it was submitting the new information “to support resolution of certain issues identified by the Board” in LBP-11-17.²⁵ On July 9, 2013, the Board directed that “adjudicatory submissions based on NL-13-075 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.”²⁶ As also stated previously,²⁷ 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

²¹ See (1) “Applicant’s Petition for Review of Board Decisions Regarding Contentions NYS-8 (Electrical Transformers), CW-EC-3A (Environmental Justice), and NYS-35/36 (SAMA Cost Estimates)” (Feb. 14, 2014) (“Applicant’s Petition for Review”); and (2) “NRC Staff’s Petition for Commission Review of LBP-13-13 in Part (Contentions NYS-8 and CW-EC-3A), and LBP-11-17 (Contention NYS-35/36)” (Feb. 14, 2014) (“Staff Petition for Review”).

²² Order by the NRC Secretary (Feb. 28, 2014), at 2.

²³ See 25th Status Report, at 6.

²⁴ 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).

²⁵ *Id.* at 1 and 2.

²⁶ “Order (Granting Entergy’s Motion [for] Clarification)” (July 9, 2013), at 2.

²⁷ See 25th Status Report, at 6.

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

9. Contention NYS-12C (SAMAs). On February 14, 2014, New York filed a petition for Commission review of the Board's resolution of Contention NYS-12C in LBP-13-13,²⁸ on February 28, 2014, the Commission deferred the filing of answers to that petition to await the Board's ruling on New York's motion to reopen the record and reconsider the Board's decision in LBP-13-13. On April 1, 2014, the Board denied New York's motion to reopen/reconsider.²⁹ Accordingly, further litigation of this matter is now before the Commission, in accordance with its Order of February 28, 2014.³⁰

10. Contention NYS-37 (No-Action Alternative). As stated previously,³¹ 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 ("PSC"), as a new exhibit on Contention NYS-37 (No-Action Alternative).³² In its Order, the Board, *inter alia*, directed the Staff to "report to the Board . . . whether it will supplement the FSEIS" to address the PSC Order; 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"; and

²⁸ "State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 With Respect to Consolidated Contention NYS-12C" (Feb. 14, 2014).

²⁹ "Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)" (Apr. 1, 2014); see *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC ____ (Nov. 27, 2013) (slip op.).

³⁰ Order by the Secretary (Feb. 28, 2014), at 2. Other petitions for review of LBP-13-13 were filed by Clearwater (on Contention CW-EC3A), and by Entergy and the Staff (on Contentions NYS-8, CW-EC3A, and NYS-35/36); answers to those petitions were filed on March 25, 2014; replies are due April 9, 2014.

³¹ See 25th Status Report, at 8.

³² "Order (Denying New York's Motion)" (Nov. 27, 2013).

stated that if a new contention regarding the PSC Order is admitted, the Board intended to “establish an expedited schedule so that it could be resolved with the pending Track 2 contentions.”³³

On December 20, 2013, the Staff filed its response to the Board’s Order, in which it 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.³⁴ On April 1, 2014, the Board issued an Order permitting New York to file a new or amended contention based on the PSC Order within 30 days of issuance of the Board’s Order (*i.e.*, on or before May 1, 2014).³⁵

11. Aquatic Impacts. On February 19, 2014, Entergy submitted new information to the Staff regarding the impacts of plant operation on various aquatic species in the Hudson River, modifying information contained in the FSEIS for Indian Point license renewal.³⁶ The Staff has undertaken a review of this information; if the Staff determines that this information is new and significant, it may decide to issue an FSEIS supplement to address the information. The Staff will provide further information to the Board regarding this issue when available.

³³ *Id.* at 2-3.

³⁴ “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).

³⁵ “Order (Denying New York’s Motion to Reopen the Record; Setting Deadline for New or Amended Contention)” (Apr. 1, 2014), at 4.

³⁶ See Letter from F. Dacimo, Entergy, to Lois James and NRC Document Control Desk, “Final Supplemental Environmental Impact Statement,” NL-14-030 (Feb. 19, 2014) (ADAMS Accession No. ML14063A528).

12. Other Matters. 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 1st day of April 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247/286-LR
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(Indian Point Nuclear Generating)	
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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 26th STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated April 1, 2014, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 1st day of April, 2014.

/Signed (electronically) by/

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