

September 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 31st 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 31st 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 Indian Point Units 2 and 3 ("IP2/IP3"), in which it will address changes made to the license renewal application ("LRA") and information provided by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") in response to Staff requests for additional information ("RAIs") following the issuance of SER Supplement 1;² this will include information concerning the Applicant's Reactor Vessel Internals ("RVI") Aging Management Program and Inspection Plan ("AMP").

¹ See, e.g., "NRC Staff's 30th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (Aug 1, 2014) ("30th Status Report") at 1-2.

² "Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Plant Units 2 and 3," NUREG-1930, Supp. 1 (Aug, 2011) ("SER Supplement 1").

With respect to RVI issues, the Staff transmitted RAIs to Entergy on November 19, 2013, to which Entergy responded on January 16, 2014.³ On April 9, 2014, the Staff transmitted additional RAIs on RVI issues to Entergy;⁴ Entergy submitted its response to those RAIs on June 9, 2014,⁵ and submitted an amended RAI response on August 5, 2014.⁶ The Staff is reviewing Entergy's amended RAI response. As stated previously, if the Staff finds that Entergy's amended RAI response is acceptable, the Staff anticipates that SER Supplement 2 would be issued in November 2014, although this date could slip to December 2014.⁷ The Staff will provide further information to the Board regarding this matter when 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,⁸ 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 Letter from Fred Dacimo (Entergy) to NRC Document Control Desk, NL-14-010 (Jan. 16, 2014) (ADAMS Accession No. ML14027A413).

⁴ Letter from Kimberly Green (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application, Set 2014-02" (April 9, 2014) (ADAMS Accession No. ML14094A173).

⁵ Letter from Fred Dacimo (Entergy) to NRC Document Control Desk, NL-14-067 (June 9, 2014) (ADAMS Accession No. ML14176A159).

⁶ Letter from Fred Dacimo (Entergy) to NRC Document Control Desk, NL-14-093 (Aug. 5, 2014) (ADAMS Accession No. ML14225A777); Transcript of Teleconference (July 17, 2014) ("Tr."), at 4603-04.

⁷ 30th Status Report, at 2; Tr. at 4624-25.

⁸ 30th Status Report, at 2.

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,⁹ 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 the provisions 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).¹⁰ Also on September 26, 2013, the Applicant submitted Amendment No. 14 to its LRA, amending certain aspects of the IP2 LRA.¹¹ That information has been reviewed by the Staff and will be addressed in SER Supplement 2.

Environmental Issues

4. Waste Confidence. In July 2012, following issuance of the D.C. Circuit Court of Appeals’ decision in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), the Intervenor in this proceeding filed two new contentions (CW-SC-4 and NYS-39/RK-EC-9/CW-EC-10) related to waste storage and/or disposal.¹² The Applicant and the Staff responded to those contentions on August 2 and 3, 2012, respectively.¹³ On August 7, 2012, the Commission

⁹ See, e.g., *id.*, at 3.

¹⁰ 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).

¹¹ 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).

¹² See (1) “Hudson River Sloop Clearwater, Inc.’s Motion for Leave to Add A New Contention Based Upon New Information and Petition to Add New Contention” (July 9, 2012); (2) “State of New York, Riverkeeper, and Clearwater’s Joint Motion for Leave to File A New Contention Concerning the On-Site Storage of Nuclear Waste at Indian Point” (July 8, 2012); and (3) “State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater’s Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning the On-Site Storage of Nuclear Waste at Indian Point” (July 8, 2012).

¹³ See (1) “NRC Staff’s Response to Intervenor’s [] Joint Motion for Leave to File A New Contention Concerning the Onsite Storage of Nuclear Waste at Indian Point and [] Joint Contention NYS-39/RK-EC-9/CW-EC-10” (Aug. 2, 2012); (2) “Entergy’s Answer to New York State, Riverkeeper, and Clearwater’s Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning On-Site Storage of Nuclear Waste at Indian Point” (Aug. 2, 2012); (3) “NRC Staff’s Answer to ‘Hudson River Sloop Clearwater, Inc.’s Motion for Leave to Add A New Contention Based Upon New Information and Petition to Add New
(continued. . .)

issued CLI-12-16, in which it stated that it was undertaking further consideration of its “Waste Confidence Decision” in light of the court’s decision and that it “will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court’s remand is appropriately addressed;” further, the Commission directed that contentions raising these matters be held in abeyance pending further order.¹⁴ In turn, on August 8, 2012, the Board in this proceeding ordered that all other pleadings concerning the Intervenor’s two proposed contentions be held in abeyance, pending further order.¹⁵

On August 26, 2014, the Commission issued its decision in CLI-14-08.¹⁶ Therein, the Commission lifted its suspension of final licensing decisions, in view of its issuance of a generic environmental impact statement (“GEIS”) and a revised rule codifying its generic determinations regarding the environmental impacts of continued spent fuel storage beyond a reactor’s licensed operating life.¹⁷ In addition, the Commission dismissed the long term storage/waste confidence-related contentions pending before it in five combined license (“COL”) and two license renewal proceedings, and terminated those proceedings; and it directed the Atomic Safety and Licensing Boards in all proceedings other than the Indian Point proceeding, to reject

(. . .continued)

Contention’ (Contention CW-SC-4 (Safety of Long-Term Storage))” (Aug. 3, 2012); and (4) “Entergy’s Answer to Hudson River Sloop Clearwater, Inc.’s New Safety Contention Concerning the Waste Confidence Rule” (Aug. 3, 2012).

¹⁴ *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, 68-69 (Aug. 7, 2012).

¹⁵ “Order (Holding Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4 in Abeyance)” (Aug. 8, 2012).

¹⁶ *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-08, 80 NRC __ (Aug. 26, 2014) (slip op.).

¹⁷ See (1) “Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel,” NUREG-2157 (Aug. 2014) (ADAMS Accession No. ML14188B749); (2) Staff Requirements—SECY-14-0072—Final Rule, Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20) (Aug. 26, 2014) (ADAMS Accession No. ML14237A092); and (3) SECY-14-0072, “Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20)” (July 21, 2014) (attaching the GEIS and the draft Final Rule, Continued Storage of Spent Nuclear Fuel (ADAMS Accession No. ML14177A482) (package).

the spent fuel storage/waste confidence contentions pending before them, consistent with its decision. Finally, the Commission directed the Board in *Indian Point* to proceed as follows:

To the extent that Contentions CW-SC-4 and NYS-39/RK-EC-9/CW-EC-10 raise issues resolved by the Continued Storage Rule, the Board is directed to dismiss them consistent with our opinion today. To the extent that these contentions raise other matters, the Board should assess their admissibility under our generally applicable rules of practice.³²

³² See 10 C.F.R. § 2.309(c), (f).¹⁸

Contentions CW-SC-4 and NYS-39/RK-EC-9/CW-EC-10 are now pending before the Board.¹⁹

5. 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 decision;²¹ New York filed an answer opposing those petitions on March 25, 2014; the Applicant and Staff filed replies to New York's answer on April 9, 2014. The petitions are currently pending before the Commission.

As stated previously,²² 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

¹⁸ CLI-14-08, slip op. at 10.

¹⁹ The Board issued its Order holding all further pleadings on these contentions in abeyance prior to the Intervenor's filing of replies to the Staff's and Entergy's answers of August 2 and 3, 2012. It is unclear whether or when replies to the Staff's and Entergy's answers will be filed.

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).

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 See, e.g., 30th Status Report, at 5.

project cost estimates for Severe Accident Mitigation Alternatives (“SAMAs”) that previously had been identified as potentially cost-beneficial.²³ In its notification, the Applicant noted, *inter alia*, that it was submitting the information “to support resolution of certain issues identified by the Board” in LBP-11-17.²⁴ 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.”²⁵

The Staff has reviewed the Applicant’s refined engineering project cost information and plans to issue RAIs to the Applicant concerning this information in the near future; the Staff expects to complete its evaluation this fall, and will present its evaluation in an FSEIS Supplement to be published in 2015.²⁶ As stated previously, the Staff will provide a schedule for publication of the FSEIS Supplement this fall,²⁷ and will provide further information to the Board regarding this issue when available.

²³ 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).

²⁴ *Id.*, at 1 and 2.

²⁵ “Order (Granting Entergy’s Motion [for] Clarification)” (July 9, 2013), at 2.

²⁶ See Letter from Sherwin E. Turk, Esq., to the Board (July 15, 2014); Tr. at 4598; “Indian Point Nuclear Generating Units 2 and 3; Entergy Nuclear Operations, Inc., License Renewal Application; Intent to Prepare A Second Supplement to Final Supplemental Environmental Impact Statement,” 79 Fed. Reg. 52,058 (Sept. 2, 2014)..

²⁷ Tr. at 4590.

6. Contention NYS-12C (SAMAs). There has been no change in this item since the Staff filed its previous status report.²⁸ On February 14, 2014, New York filed a petition for Commission review of the Board's decision in LBP-13-13,²⁹ concerning its resolution of Contention NYS-12C;³⁰ the Applicant and Staff filed answers to that petition on April 28, 2014; New York filed its reply on May 22, 2014.³¹ On April 1, 2014, the Board denied New York's motion to reopen the record and reconsider its decision in LBP-13-13, concerning its resolution of Contention NYS-12C.³² On April 28, 2014, New York filed a petition for review of the Board's Order denying its motion to reopen and reconsider;³³ answers to that petition were filed by Entergy and the Staff on May 23, 2014; New York's combined reply to those answers was filed on June 2, 2014. New York's petitions are currently pending before the Commission.

7. 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 to review the IP2/IP3 LRA to determine its consistency with the New York State Coastal Management Program, pursuant to the Coastal Zone Management Act ("CZMA").³⁴ As the Board noted,

²⁸ See 30th Status Report, at 6.

²⁹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC 246 (Nov. 27, 2013).

³⁰ "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).

³¹ Petitions for review of LBP-13-13 were also 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 were filed on April 9, 2014.

³² "Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)" (Apr. 1, 2014).

³³ "State of New York Petition for Review of Atomic Safety and Licensing Board's April 1, 2014 Decision Denying the State's Motion to Reopen the Record and for Reconsideration of the Board's November 27, 2013 Partial Initial Decision Concerning Consolidated Contention NYS-12C" (Apr. 28, 2014).

³⁴ "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013).

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.³⁵ The Staff has initiated consultations with the New York State Department of State (“NYSDOS”), and expects to continue those consultations with NYSDOS and Entergy.

On December 6, 2013, the Staff transmitted a request for information to NYSDOS regarding prior reviews of Indian Point’s consistency with the New York Coastal Management Program;³⁶ NYSDOS provided its response to the Staff on May 30, 2014.³⁷ On July 15, 2014, Entergy submitted its views concerning the NYSDOS response,³⁸ to which NYSDOS replied on July 25, 2014.³⁹ The Staff is currently reviewing Entergy’s comments and NYSDOS’s reply, and is considering whether to seek additional information regarding this matter. The Staff will provide further information to the Board regarding this issue when available.

³⁵ 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).

³⁶ See (1) 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); (2) Letter from George R Stafford (NYSDOS) to David J. Wrona (NRC) (Jan. 6, 2014) (ADAMS Accession No. ML14028A209); (3) “Summary of Phone Call Between [NYSDOS] and [NRC] on January 13, 2014” (Feb. 19, 2014) (ADAMS Accession No. ML14024A372); (4) 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); and (5) Summary of Phone Call Between New York State Department of State and U.S. Nuclear Regulatory Commission on May 7, 2014, Regarding the Coastal Zone Management Act Consistency Review (ADAMS Accession No. ML14136A005).

³⁷ See Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (May 30, 2014) (ADAMS Accession No. ML14154A334).

³⁸ See Letter from Bobby R. Burchfield, Esq., to David J. Wrona (NRC) (July 15, 2014) (ADAMS Accession No. ML141198A229).

³⁹ See Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (July 25, 2014) (ADAMS Accession No. ML14230A005).

8. Aquatic Impacts. As stated previously,⁴⁰ 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,⁴¹ modifying the information that had been evaluated in the FSEIS (December 2010) and FSEIS Supplement (FSEIS Vol. 4) (June 2013).⁴² The Staff is reviewing the new information and has determined that it requires additional information to complete its review, as set forth in an RAI issued on August 28, 2014.⁴³ As stated previously, the Staff plans to present its evaluation of the new information in an FSEIS supplement to be published in 2015, and will provide a schedule for publication of the FSEIS Supplement this fall.⁴⁴ The Staff will provide further information to the Board regarding this issue when available.

⁴⁰ See 30th Status Report, at 7-8.

⁴¹ 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).

⁴² "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report," NUREG-1437, Supplement 38 (Dec. 2010) ("FSEIS") (Ex. NYS000133A-J); "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report," NUREG-1437, Supplement 38, Volume 4 (June 2013) (ADAMS Accession No. ML13162A616).

⁴³ See Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review" (Aug. 28, 2014) (ADAMS Accession No. ML14225A847).

⁴⁴ See letter from Sherwin E. Turk, Esq., to the Board (July 15, 2014); Tr. at 4590, 4598.

9. 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 2nd day of September 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
)	
(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 31st STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated September 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 September, 2014.

/Signed (electronically) by/

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