

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	September 21, 2015

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**ENTERGY'S MOTION TO STRIKE AND MOTION IN LIMINE TO EXCLUDE  
PORTIONS OF THE INTERVENORS' REBUTTAL FILINGS ON TRACK 2 SAFETY  
CONTENTIONS**

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**I. INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.1204, 2.319, 2.323, 2.337, and in accordance with the Atomic Safety and Licensing Board’s (“Board”) Scheduling Order of July 1, 2010 (“Scheduling Order”), and subsequent Orders dated December 9, 2014<sup>1</sup> and May 27, 2015,<sup>2</sup> Entergy Nuclear Operations, Inc. (“Entergy”) hereby timely moves to: (1) strike one paragraph of the State of New York Supplemental Reply Statement of Position Contention NYS-25;<sup>3</sup> and (2) exclude specified portions of the Report of Dr. Joram Hopenfled in Response to Entergy and NRC Staff Testimony Regarding Contention NYS-26B/RK-TC-1B and Amended Contention NYS-38/RK-TC-5<sup>4</sup> from the record.

The upcoming hearing on Track 2 safety contentions in this proceeding is a limited one, restricted to the narrow safety issues within the scope of license renewal under 10 C.F.R. Part 54, and further restricted to the specific admitted, in-scope claims raised in the Track 2 contentions

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<sup>1</sup> Licensing Board Order (Revised Scheduling Order) at 3 (Dec. 9, 2014) (unpublished).

<sup>2</sup> Licensing Board Order (Granting New York’s Motion for an Eight-Day Extension of the Filing Deadline) at 1 (May 27, 2015) (unpublished).

<sup>3</sup> (Sept. 9, 2015) (NYS000568) (“NYS-25 Reply SOP”).

<sup>4</sup> (Sept. 9, 2015) (RIV000161) (“Dr. Hopenfled’s 2015 Response Report”).

to be heard in the upcoming hearing. The Commission has specifically and recently cautioned that the hearings in this proceeding must not stray beyond the scope of license renewal.<sup>5</sup> And the Commission has also clearly and recently held that testimony on a contention should be limited to the scope of the bases as pled and admitted, because those bases “defined the scope of the . . . contention.”<sup>6</sup> In their recent rebuttal filings, New York State (“NYS” or “the State”) and Riverkeeper (collectively, “Intervenors”) depart from these limits by submitting evidence and arguments on the out-of-scope and irrelevant topics identified in this motion. To ensure that the testimony during the upcoming hearings remains within the limits set forth by the Commission and in the admitted contentions, the Board should strike the materials identified below.

As shown in Section III, below, Intervenors’ rebuttal submissions include evidence and argument on several out-of-scope topics. First, the NYS-25 Reply SOP raises a challenge to Entergy’s commitment to submit a revised pressurized thermal shock (“PTS”) evaluation for one particular reactor pressure vessel (“RPV”) plate at Indian Point Nuclear Generating Unit 3 (“IP3”).<sup>7</sup> The State is not permitted to expand the scope of contention NYS-25 to include this issue. The Board should therefore strike it.

Second, Dr. Hopenfeld’s 2015 Response Report provides an extended critique of WCAP-17091-NP, a Westinghouse report providing criteria for use in an “H\*” evaluation of the tube-to-tubesheet weld pressure boundary.<sup>8</sup> But the H\* evaluation relates only to an already-approved

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<sup>5</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), CLI-15-6, 81 NRC \_\_\_, slip op. at 47 (Mar. 9, 2015).

<sup>6</sup> *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100-01 (2010).

<sup>7</sup> See NYS-25 Reply SOP at 12-13 (NYS000568). Entergy originally made this commitment in 2007 and modified it for the last time in 2008. See NUREG-1930, Supp. 2, Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Plant, Unit Nos. 2 and 3 at A-12 (Nov. 2014) (NYS000507) (citing NL-07-039 and NL-08-127).

<sup>8</sup> See Dr. Hopenfeld’s 2015 Response Report at 15-17 (RIV000161) (citing WCAP-17091-NP, Rev. 0, H\*: Alternate Repair Criteria for the Tubesheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model 44F) (June 2009) (“WCAP-17091- NP”) (ENT000570)).

license amendment for Indian Point Nuclear Generating Unit 2 (“IP2”), redefining the reactor coolant pressure boundary based on this methodology.<sup>9</sup> This license amendment is now part of the current licensing basis (“CLB”) for IP2, so any question of the adequacy of the “H\*” methodology is outside the scope of this proceeding.

Dr. Hopenfeld also challenges certain CLB issues that Entergy has long argued are outside the scope of this proceeding and the Track 2 contentions. In his consolidated report on NYS-26B/RK-TC-1B and NYS-38/RK-TC-5, Dr. Hopenfeld continues to argue that Entergy should expand the scope of its Fatigue Monitoring Program (“FMP”) to include environmentally-assisted fatigue (“EAF”) evaluations for locations where there is no CLB cumulative usage factor (“CUF”) fatigue analysis, thereby impermissibly challenging the adequacy of the IP2 and IP3 CLBs.<sup>10</sup>

In addition, Dr. Hopenfeld’s challenges to the forty year-old CUFs of record for certain components that were part of the IP2 and IP3 original design basis are impermissible challenges to the CLB that are outside the scope of this proceeding and Intervenor’s contentions.<sup>11</sup> Indeed, Dr. Hopenfeld acknowledges this fact by repeatedly describing these CUF calculations as the “CUFs of Record” and “CLB CUFs.”<sup>12</sup>

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<sup>9</sup> See Letter from D. Pickett, NRC, to Vice President, Operations, Entergy, “Indian Point Nuclear Generating Unit No. 2 – Issuance of Amendment re: H\* Alternate Repair Criteria for Steam Generator Tube Inspection and Repair (TAC No. MF3369)” (Sept. 5, 2014) (“H\* Amendment Issuance”) (NYS000542). The Intervenor’s did not seek to intervene in the IP2 H\* license amendment proceeding.

<sup>10</sup> See Dr. Hopenfeld’s 2015 Response Report at 13-14 (RIV000161). In 2013, Entergy moved to exclude similar claims from Dr. Hopenfeld’s rebuttal testimony on NYS-38/RK-TC-5. See Entergy’s Motion to Strike Portions of Intervenor’s Revised Statement of Position and Motion in Limine to Exclude Portions of the Prefiled Rebuttal Testimony and Exhibits for Contention NYS-38/RK-TC-5 (Safety Commitments) (Jan. 7, 2013), *available at* ADAMS Accession No. ML13007A515, later corrected on January 25, 2013, *available at* ADAMS Accession No. ML13025A245 (“Entergy 2013 Motion to Strike”). That motion remains pending before the Board.

<sup>11</sup> See Dr. Hopenfeld’s 2015 Response Report at 17-18 (RIV000161).

<sup>12</sup> *Id.*

Therefore, Entergy respectfully requests that the Board exclude these irrelevant and impermissible claims.<sup>13</sup>

## **II. ADMISSIBILITY OF EVIDENCE**

### **A. An NRC Adjudicatory Hearing Must Be Limited to Relevant and Material Issues**

Under 10 C.F.R. § 2.337(a), “[o]nly relevant, material, and reliable evidence . . . will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.” Thus, pursuant to 10 C.F.R. § 2.319(d), the Board may “strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative,” and under Section 2.319(e) the Board may restrict evidence or arguments for the same reasons.

Because only relevant and material evidence is admissible, the Board should exclude testimony and exhibits that are outside the admitted scope of a contention or that introduce new bases for a contention.<sup>14</sup> Similarly, to ensure the hearing is appropriately focused on relevant issues, it should exclude testimony and supporting evidence that is outside the scope of this license renewal proceeding.<sup>15</sup> Indeed, as the Commission recently explained in a decision in this proceeding, it expects the Board to enforce the Commission’s limits on the scope of this proceeding and the contentions admitted in it, to avoid expending resources to adjudicate excluded issues.<sup>16</sup>

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<sup>13</sup> See *Indian Point*, CLI-15-6, slip op. at 47.

<sup>14</sup> See, e.g., Licensing Board Order (Denying Clearwater’s Motion to Supplement the Record) (Dec. 5, 2012) (unpublished).

<sup>15</sup> See *Indian Point*, CLI-15-6, slip op. at 47; see also, e.g., *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), Licensing Board Order (Ruling on Pending Matters and Addressing Preparation of Exhibits for Hearing) at 2 (Mar. 24, 2008) (unpublished) (granting in part motions to exclude testimony on topics outside the scope of a license renewal proceeding, because such issues “do not relate to aging and/or because they are addressed as part of ongoing regulatory process”), available at ADAMS Accession No. ML080840470.

<sup>16</sup> See *Indian Point*, CLI-15-6, slip op. at 47.

**B. The Scope of the License Renewal Proceeding Is Limited**

The Commission has intentionally limited the scope of a license renewal proceeding under 10 C.F.R. Part 54.<sup>17</sup> The license renewal safety review does not include any review of the adequacy of the CLB or of matters within the NRC’s current-term, ongoing regulatory oversight processes.<sup>18</sup> As the Commission explained in the seminal *Turkey Point* decision over a decade ago, it is not “necessary or appropriate to throw open the full gamut of provisions in a plant’s current licensing basis to re-analysis during the license renewal review.”<sup>19</sup>

**C. The Scope of a Contention Is Limited to Its Specific Bases, as Pled and Admitted**

Intervenors are not permitted to expand the scope of a contention after it has been admitted, beyond the specific bases proffered and accepted by the Board, except through a motion for leave to file a new or amended contention. For example, in *Vogtle*, the Commission upheld a Board ruling excluding testimony that strayed beyond the scope of the bases as pled and admitted, because those bases “defined the scope of the . . . contention.”<sup>20</sup> Similarly, in *Pilgrim*, the Commission reiterated that longstanding precedent requires a Board to reexamine the bases to determine the scope of a contention because the “reach of a contention necessarily hinges upon its terms *coupled with* its stated bases.”<sup>21</sup> A key reason for this requirement is to provide

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<sup>17</sup> See *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-11-11, 74 NRC 427, 435 (2011) (“license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to [our] ongoing compliance oversight activity”) (citations and internal quotations omitted); *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 72 NRC 481, 489 (2010) (describing the Commission’s “longstanding position that license renewal proceedings should be limited in scope”).

<sup>18</sup> See Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,473 (May 8, 1995) (NYS000016) (“The regulatory process is the means by which the Commission continually assesses the adequacy of and compliance with the CLB.”).

<sup>19</sup> *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 9 (2001).

<sup>20</sup> *Vogtle*, CLI-10-5, 71 NRC at 100-01.

<sup>21</sup> *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (emphasis in original) (citing *Pub. Serv. Co. of N. H.* (Seabrook Station, Units

notice to the opposing parties of the issues they will need to defend against. Thus, Intervenor “may not freely change the focus of an admitted contention at will to add a host of new issues and objections that could have been raised at the outset. . . . [We] do not allow distinctly new complaints to be added at will as litigation progresses.”<sup>22</sup>

### III. ARGUMENT

As discussed below, the portions of the NYS-25 Reply SOP identified in Attachment 1, Table A should be stricken.<sup>23</sup> In addition, pursuant to 10 C.F.R. §§ 2.319(d) and 2.337(a), the portions of Dr. Hopfenfeld’s 2015 Response Report identified in Attachment 1, Table B, should be excluded from the evidentiary record.

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1 & 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991)).

<sup>22</sup> *Id.* (citation and internal quotation marks omitted). Intervenor’s have previously argued that the limitation of contentions to the specific bases pled and admitted would “plunge NRC proceedings into the abyss of common law pleading technicalities” that existed before the modernization of the Federal Rules of Civil Procedure (“FRCP”). State of New York and Riverkeeper’s Joint Answer to Entergy’s Motion in Limine to Exclude Portions of Intervenor’s Prefiled Direct Testimony, Expert Report, Statement of Position, and Exhibits for Contention NYS-38/RK-TC-5 at 8 (July 16, 2012) (“Joint Answer to Motion in Limine on NYS-38/RK-TC-5”) (not publicly available on ADAMS). This proceeding, however, is governed by the Rules of Practice in 10 C.F.R. Part 2, not the FRCP. The Rules of Practice represent a carefully-considered and well-settled approach to the unique challenges of NRC proceedings. Intervenor does not—and cannot—challenge the binding decisions applying those rules in *Vogtle* (CLI-10-5), *Pilgrim* (CLI-10-11), and *Indian Point* (CLI-15-6). *See also NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 NRC 301, 310 n.50 (2012); *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).

<sup>23</sup> This Board has noted that a position statement is a party’s legal interpretation of its evidence, not its actual evidence, and that the Board will use it inasmuch as it is supported by the evidence proffered by that party. *See* Licensing Board Order (Granting in Part and Denying in Part Applicant’s Motion in Limine) at 24 (Mar. 6, 2012) (“Board March 6, 2012 Motion in Limine Rulings”). Nevertheless, portions of a position statement that raise excluded issues and arguments may be stricken. *See AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), Licensing Board Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification) at 2 (Aug. 9, 2007) (unpublished), *available at* ADAMS Accession No. ML072210832.

**A. New York’s Challenge Regarding the PTS Screening Criteria for one RPV Plate at IP3 Is Outside the Scope of NYS-25**

The Board should strike the section of the NYS-25 Reply SOP that criticizes Entergy’s commitment to submit a revised PTS evaluation for one RPV plate at IP3.<sup>24</sup> This is a new claim that is not part of NYS-25, as pled and admitted by the Board.<sup>25</sup>

NYS-25 generally asserts that “Entergy’s License Renewal Application does not include an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor pressure vessels (“RPVs”) and the associated internals at both plants . . . and an evaluation of time-limited aging analysis . . . .”<sup>26</sup> While the contention now focuses on the reactor vessel internals (“RVIs”) rather than RPVs,<sup>27</sup> the State’s original filings vaguely alleged that the information in the LRA on the TLAAAs associated with the RPVs omitted information on age-related accident analyses,<sup>28</sup> and raised concerns that two RPV shell plates at IP2 (specifically, plates B2002-3 and B2003-1) will not meet the upper-shelf energy acceptance criterion on 50 ft-lbs.<sup>29</sup> Although these RPV issues are no longer the focus of NYS-25,<sup>30</sup> Entergy provided background testimony summarizing the information regarding the RPV TLAAAs in the IPEC LRA to ensure a complete record and to demonstrate that the LRA complies fully with 10 C.F.R.

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<sup>24</sup> See NYS-25 Reply SOP at 12-13 (NYS000568).

<sup>25</sup> See, e.g., *Pilgrim*, CLI-10-11, 71 NRC at 309.

<sup>26</sup> New York State, Notice of Intention to Participate and Petition to Intervene at 223 (Nov. 30, 2007) (“NYS Petition”).

<sup>27</sup> See State of New York, Revised Statement of Position in Support of Contention NYS-25 at 17 (June 9, 2015) (“NYS Revised SOP”) (NYS000481).

<sup>28</sup> E.g., Declaration of Dr. Richard T. Lahey, Jr. ¶ 15 (Nov. 30, 2007) (“2007 Lahey Decl.”) (NYS000298).

<sup>29</sup> NYS Petition at 226; 2007 Lahey Decl. ¶ 18 (NYS000298).

<sup>30</sup> NYS Revised SOP at 17 (NYS000481).



Part 54—particularly in response to the vague claim that the TLAAs in the LRA omitted any age-related accident analyses.<sup>31</sup>

The State now raises an issue regarding the *IP3* RPV. It now asserts that “Entergy’s submissions confirm that it still has not taken affirmative steps to deal with an RPV plate in IP3 that is expected to exceed the [PTS] screening criteria.”<sup>32</sup> The State is specifically referring to IP3 plate B2803-3,<sup>33</sup> which, as noted in the original LRA filed in 2007, is expected to exceed the PTS screening criteria approximately 9 years after IP3 enters the PEO; *i.e.*, in 2024.<sup>34</sup> To address this issue, Entergy committed in 2007 to submit a plant-specific safety analyses for this plate three years prior to reaching the PTS screening criteria.<sup>35</sup> The NRC Staff approved this commitment (Commitment 32) in the original SER in 2009.<sup>36</sup>

The State’s allegation is clearly beyond the enumerated RPV-related bases for NYS-25. Specifically, it is not an allegation that any RPV-related TLAAs omit an age-related accident analysis.<sup>37</sup> The State’s concern involves a different TLAA from the one identified by Dr. Lahey in 2007 (the Pressurized Thermal Shock TLAA as opposed to the Charpy Upper Shelf Energy

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<sup>31</sup> The fact that Entergy submitted evidence on a particular topic does not change the scope of this proceeding or expand the bases of a contention, as pled or admitted. *See, e.g., Pilgrim*, CLI-10-11, 71 NRC at 309.

<sup>32</sup> NYS-25 Reply SOP at 12 (NYS000568) .

<sup>33</sup> *See id.*

<sup>34</sup> *See* Testimony of Entergy Witnesses Nelson F. Azevedo, Robert J. Dolansky, Alan B. Cox, Jack R. Strosnider, Timothy J. Griesbach, Randy G. Lott, and Mark A. Gray Regarding Contention NYS-25 (Embrittlement) at A222 (Aug. 10, 2015) (“Entergy’s NYS-25 Testimony”) (ENT000616) (citing Indian Point Energy Center License Renewal Application (“LRA”) at 4.2-9 (Apr. 2007) (ENT000015B); NL-07-140, Letter from F. Dacimo, Entergy, to NRC Document Control Desk, “Reply to Request for Additional Information Regarding License Renewal Application,” Attach. 1 at 8 (Nov. 28, 2007) (ENT000677)).

<sup>35</sup> *See* Entergy’s NYS-25 Testimony at A222 (ENT000616) (citing NUREG-1930, Safety Evaluation Report Relating to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 & 3 at 4-17 (Nov. 2009) (“SER”) (NYS000326E)).

<sup>36</sup> *See id.*; *see also* SER at 4-17, A-21 (NYS000326E).

<sup>37</sup> Thus, the State’s reference to the alleged lack of “age-related accident analyses” in Section A.3.2 of the LRA, *see* NYS Petition at 224, is unrelated to the status of Commitment 32 as that issue is raised in the NYS-25 Reply SOP.

TLAA),<sup>38</sup> a different plate from those identified in 2007 (B2803-3 as opposed to B2002-3 and B2003-1), and even a different unit (IP3 as opposed to IP2).<sup>39</sup>

Because this is a new complaint, beyond the bases for NYS-25, as pled and admitted,<sup>40</sup> the Board should strike or disregard the material identified in Attachment 1, Table A.

**B. Dr. Hopenfeld's Critique of an NRC-Approved License Amendment Is Outside the Scope of This Proceeding**

The Board should exclude the section of Dr. Hopenfeld's 2015 Response Report that critiques WCAP-17091-NP, a Westinghouse report providing criteria for use in an "H\*" evaluation of the tube-to-tubesheet weld pressure boundary,<sup>41</sup> because any question of the technical adequacy of this report is outside the scope of this proceeding.

By way of background, Contention NYS-38/RK-TC-5 challenges the sufficiency of the information in several Entergy commitments, including Commitment 42.<sup>42</sup> In Commitment 42, Entergy committed to manage the effects of primary water stress corrosion cracking ("PWSCC") in the steam generator tube-to-tubesheet welds through one of two options.<sup>43</sup> Option 1 is to perform an analytical evaluation to determine that those welds are not susceptible to PWSCC, or

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<sup>38</sup> See LRA § 4.2 (ENT000015B).

<sup>39</sup> In response, the State may point to testimony from Dr. Lahey discussing this issue in background information in his 2011 and 2015 pre-filed testimony, in support of an assertion that the State has previously raised concerns about the PTS TLAA. See Pre-Filed Written Testimony of Richard T. Lahey, Jr. Regarding Contention NYS-25 at 30-31 (Dec. 22, 2011) (NYS000294); Revised Pre-filed Written Testimony of Dr. Richard T. Lahey, Jr. Regarding Contention NYS-25 at 42-43 (June 9, 2015) (NYS000482). But again, the submission of pre-filed testimony on a topic does not and cannot expand the scope of a contention. See, e.g., *Pilgrim*, CLI-10-11, 71 NRC at 309.

<sup>40</sup> See *Pilgrim*, CLI-10-11, 71 NRC at 309.

<sup>41</sup> See Revised Testimony of Entergy Witnesses Nelson F. Azevedo, Robert J. Dolansky, Alan B. Cox, Jack R. Strosnider, Timothy J. Griesbach, Barry M. Gordon, Randy G. Lott, and Mark A. Gray Regarding Contention NYS-38/RK-TC-5 (Safety Commitments) at A161 (Aug. 10, 2015) ("Entergy's NYS-38/RK-TC-5 Testimony") (ENT000699).

<sup>42</sup> See Licensing Board Order (Granting Entergy's Motion for Clarification of Licensing Board Memorandum and Order Admitting Contention NYS-38/RK-TC-5) at 3 (Dec. 6, 2011).

<sup>43</sup> See NUREG-1930, Supp. 1, Safety Evaluation Report Relating to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 & 3, at 3-22 (Aug. 2011) at 3-22 (NYS000160).

redefining the reactor coolant system (“RCS”) pressure boundary such that the tube-to-tubesheet weld is no longer included.<sup>44</sup> As stated in the Commitment, “The redefinition of the reactor coolant pressure boundary must be approved by the NRC as a license amendment request.”<sup>45</sup> Option 2 is to perform a one-time inspection on a representative number of welds in each steam generator to determine if PWSCC is present, and to undertake specific actions if the inspections identify cracking.<sup>46</sup>

Consistent with Option 1 of Commitment 42, Entergy sought and received NRC approval of a license amendment to redefine the RCS pressure boundary for IP2 to exclude the tube-to-tubesheet welds, using the “H\*” methodology.<sup>47</sup> The H\* method is described in WCAP-17091-NP, but Entergy submitted a plant-specific analysis as part of its license amendment request.<sup>48</sup>

Now, in rebuttal, Dr. Hopenfeld asserts for the first time that WCAP-17091-NP “neither addresses nor mentions the synergy between stress corrosion cracking and metal fatigue as discussed in my earlier reports,” and provides further criticisms of Westinghouse’s assumptions in that report.<sup>49</sup> But, as Entergy clearly explained in its testimony and statement of position, any question of the technical basis for the granting of this separate license amendment is a challenge to the IP2 CLB.<sup>50</sup> Entergy does not rely on WCAP-17091-NP for any other purposes within the

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<sup>44</sup> See *id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *id.*

<sup>47</sup> See Entergy’s NYS-38/RK-TC-5 Testimony at A73 (ENT000699) (citing H\* Amendment Issuance (NYS000542)).

<sup>48</sup> See NL-14-001, Letter from J. Ventosa, Entergy, to NRC Document Control Desk, “Proposed License Amendment for Alternate Repair Criteria for Steam Generator Tube Inspection and Repair, Indian Point Unit Number 2” (Jan. 16, 2014) (NYS000539) (“H\* LAR”).

<sup>49</sup> Dr. Hopenfeld’s 2015 Response Report at 15 (RIV000161); see also *id.* at 15-17.

<sup>50</sup> See Entergy’s NYS-38/RK-TC-5 Testimony at A163 (ENT000699); see also Entergy’s Revised Statement of Position Regarding Contention NYS-38/RK-TC-5 (Safety Commitments) at 60 (ENT000698) (“Entergy’s NYS-38/RK-TC-5 SOP”).

scope of its License Renewal Application for IPEC. As such, Dr. Hopenfeld's new claims are outside the scope of this proceeding and beyond the scope of Contention NYS-38/RK-TC-5.<sup>51</sup>

Accordingly, the Board should strike Dr. Hopenfeld's critique of WCAP-17091-NP, as identified in Attachment 1, Table B, as the issues he raises are outside the scope of this proceeding and irrelevant to the Track 2 hearing.

**C. Dr. Hopenfeld's Testimony Arguing that the Scope of EAF Analyses Should be Expanded Beyond the CLB Fatigue Analysis Locations Is Outside the Scope of This Proceeding and the Admitted Contentions**

In Dr. Hopenfeld's 2015 Response Report, he argues that the scope of EAF analyses should be expanded to include other primary plant components and balance-of-plant (secondary system) components that do not have existing CLB cumulative usage factors ("CUF") analyses. This testimony is plainly a direct challenge to the adequacy of the CLB, and is therefore outside the scope of this license renewal proceeding and irrelevant to the hearing on contentions NYS-26B/RK-TC-1B and NYS-38/RK-TC-5.

As is relevant here, under 10 C.F.R. § 54.21(c)(1)(iii), the IPEC FMP is intended to address the CUF time-limited aging analyses ("TLAAs") that are part of the CLB for IP2 and IP3 by managing the effects of aging due to fatigue for those components.<sup>52</sup> Under its FMP, Entergy has performed EAF analyses to demonstrate that the effects of aging will be adequately managed—for components with CLB CUFs—but it is not creating TLAAs for new components beyond those in the CLB for IP2 and IP3.<sup>53</sup> Thus, any claim that new CUF (or CUF<sub>en</sub>) analyses

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<sup>51</sup> See Turkey Point, CLI-01-17, 54 NRC at 9 (holding that it is not "necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review").

<sup>52</sup> See *Entergy Nuclear Vt. Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 35 (2010). Under 10 C.F.R. § 54.3(a) an analysis or calculation must be contained in or incorporated by reference into the CLB in order for the analysis or calculation to be a TLA. See *id.* at 34, 39.

<sup>53</sup> See *id.* at 35 (explaining that the goal of CUF<sub>en</sub> analyses performed under a Section 54.21(c)(1)(ii) AMP "is to ensure that the design code limit is not exceeded during the period of extended operation"). This is also

must be prepared for additional locations is an impermissible challenge to the adequacy of the CLB.<sup>54</sup>

Despite this clear and longstanding prohibition against challenges to the CLB, in his 2012 rebuttal filings on Contention NYS-38/RK-TC-5, Dr. Hopenfeld asserted that “Entergy’s intent to limit the scope of component selection to ‘all plant components with a CLB [CUF] fatigue analysis’ is unacceptable.”<sup>55</sup> He further claimed that Entergy should calculate environmentally-assisted fatigue usage factors (“CUF<sub>en</sub>s”) for balance-of-plant components,<sup>56</sup> despite the fact that such components are not exposed to the reactor coolant environment. Entergy filed a motion in limine to exclude this testimony, on the grounds that such claims impermissibly challenged the CLB and were outside the scope of that contention.<sup>57</sup> The Board has not yet ruled on Entergy’s 2013 Motion to Strike.<sup>58</sup>

In his most recent report Dr. Hopenfeld continues to make similar out-of-scope assertions, without identifying any requirement or basis for his opinions—as there is none. Specifically, he states that the limitation of EAF analyses to components with CLB CUFs “is an excuse and not a technical justification,” and asserts that “I have previously demonstrated why

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consistent with the guidance in the GALL Report, which explains that the FMP “prevents the fatigue TLAAAs from becoming invalid by assuring that the fatigue usage resulting from actual operational transients does not exceed the Code design limit of 1.0, including environmental effects when applicable.” NUREG-1801, Generic Aging Lessons Learned (GALL) Report, Rev. 2 at X M1-2 (Dec. 2010) (“NUREG- 1801, Rev. 2”) (NYS00147C).

<sup>54</sup> See *Vt. Yankee*, CLI-10-17, 72 NRC at 35.

<sup>55</sup> Prefiled Rebuttal Testimony of Dr. Joram Hopenfeld Regarding Contention NYS-38/RK-TC-5 at 6 (Nov. 9, 2012) (RIV000134).

<sup>56</sup> *Id.* at 12, 14.

<sup>57</sup> See Entergy 2013 Motion to Strike.

<sup>58</sup> See Entergy’s NYS-38/RK-TC-5 SOP at 18 (ENT000698).

Entergy must expand its scope of analyses to the entire plant, including to components on the secondary side.”<sup>59</sup>

Given Riverkeeper’s ongoing efforts to impermissibly expand the scope of this hearing to include challenges to the CLB, Entergy respectfully requests that the Board grant its pending motion from 2013, and further requests that it exclude Dr. Hopenfeld’s most recent claims that Entergy must reconsider the Indian Point CLB as part of its FMP and perform CUF<sub>en</sub> analyses for secondary plant components. The statements identified in Attachment 1, Table B are outside the scope of this proceeding and therefore irrelevant to the hearing on contentions NYS-26B/RK-TC-1B and NYS-38/RK-TC-5 and should be excluded from the record.

**D. Dr. Hopenfeld’s Challenges to Design Basis Fatigue Calculations Are Outside the Scope of the Proceeding and the Admitted Contentions**

Finally, the Board should exclude those portions of Dr. Hopenfeld’s 2015 Response Report that challenge the adequacy of the original design basis CUF calculations for the reactor vessel inlet and outlet nozzles for IPEC. Dr. Hopenfeld’s clear and repeated statements that he is questioning the “CUFs of Record” and “CLB CUFs”<sup>60</sup> for IP2 and IP3 demonstrate yet again that his challenges are outside the scope of both the admitted contention and this license renewal proceeding.<sup>61</sup>

On January 30, 2012, Entergy filed a motion in limine regarding Intervenors’ direct testimony, seeking, among other things, to exclude Dr. Hopenfeld’s critique of Entergy’s 40-year-old design basis fatigue calculations for the IP2 and IP3 reactor vessel inlet and outlet

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<sup>59</sup> Dr. Hopenfeld’s 2015 Response Report at 13 (RIV000161).

<sup>60</sup> *Id.* at 17-18.

<sup>61</sup> *See Turkey Point*, CLI-01-17, 54 NRC at 9 (stating that it is not “necessary or appropriate to throw open the full gamut of provisions in a plant’s current licensing basis to re-analysis during the license renewal review.”).

nozzles because they were outside the scope of this contention and proceeding.<sup>62</sup> The NRC Staff supported Entergy's Metal Fatigue Motion in Limine,<sup>63</sup> but Riverkeeper opposed it, arguing that Dr. Hopenfled's direct testimony did not challenge the IPEC design basis or CLB.<sup>64</sup> On March 6, 2012, relying on Riverkeeper's and Dr. Hopenfled's representations, the Board denied Entergy's motion, finding that Riverkeeper was not challenging any of the design basis CUF calculations.<sup>65</sup>

Thereafter, on July 30, 2012, Entergy filed a second motion in limine seeking to strike portions of Dr. Hopenfled's 2012 rebuttal testimony on NYS-26B/RK-TC-1B, because Dr. Hopenfled again, and contrary to Riverkeeper's and Dr. Hopenfled's prior statements to the Board, challenged the 40-year-old reactor vessel inlet and outlet design basis fatigue calculations. As Entergy explained, those calculations: (1) are part of the original design basis for IP2 and IP3; (2) are part of the CLB for IP2 and IP3; and (3) cover components that were not the subject of any refined fatigue analysis during the course of this license renewal proceeding and do not relate to the evaluation of similar refined fatigue calculations that might be conducted in the future as part of the FMP.<sup>66</sup>

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<sup>62</sup> See Entergy's Motion in Limine to Exclude Portions of Pre-Filed Direct Testimony, Expert Report, Exhibits, and Statement of Position for Contention NYS-26B/RK-TC-1B (Metal Fatigue) (Jan. 30, 2012) ("Entergy's Metal Fatigue Motion in Limine") (not publicly available on ADAMS).

<sup>63</sup> See NRC Staff's Response in Support of Entergy's Motion *in Limine* to Exclude Portions of Pre-filed Direct Testimony, Expert Report, Exhibits, and Statement of Position for Contention NYS-26B/RK-TC-1B (Metal Fatigue) at 8 (Feb. 9, 2012) (not publicly available on ADAMS).

<sup>64</sup> See Riverkeeper, Inc. Opposition to Entergy's Motion in Limine to Exclude Portions of Pre-filed Testimony, Expert Report, Exhibits, and Statement of Position for Contention NYS-26B/RK-TC-1B (Metal Fatigue) at 10-11 (Feb. 17, 2012) ("Riverkeeper Opposition to Metal Fatigue Motion in Limine") (not publicly available on ADAMS).

<sup>65</sup> See Board March 6, 2012 Motion in Limine Rulings at 15-16.

<sup>66</sup> See Entergy's Motion to Strike Portions of Intervenor's Revised Statement of Position and Motion in Limine to Exclude Portions of the Pre-Filed Rebuttal Testimony and Exhibits for Contention NYS-26B/RK-TC-1B (Metal Fatigue) at 9-14 (July 30, 2012) ("Entergy's Metal Fatigue Rebuttal Motion in Limine"); *see also* Revised Testimony of Entergy Witnesses Nelson F. Azevedo, Alan B. Cox, Jack R. Strosnider, Randy G. Lott, Mark A. Gray, and Barry M. Gordon Regarding Contention NYS-26B/RK-TC-1B (Metal Fatigue) § V.F (Aug. 10, 2015) (ENT000679).

The Board denied Entergy's motion in limine from the bench, with no further explanation.<sup>67</sup>

Now, Riverkeeper's witness continues to criticize the IPEC CLB CUF calculations, even presenting an entire section of his 2015 rebuttal report criticizing Entergy's "Reliance on CUFs of Record."<sup>68</sup> In it, Dr. Hopenfeld speculates that "the use of CUFs of record may not be conservative," and refers to his concerns about the "CLB CUFs."<sup>69</sup> Such unambiguous challenges to the CLB are impermissible.<sup>70</sup>

In light of the Commission's 2012 ruling in *Seabrook*, Riverkeeper's position that NYS-26B/RK-TC-1B is a broad, open-ended challenge to Entergy's FMP is no longer tenable.<sup>71</sup> Indeed, a review of the bases for NYS-26B/RK-TC-1B and NYS-38/RK-TC-5—as set forth in Intervenor's pleadings, as opposed to testimony—reveals no reference to, much less a challenge to the design basis fatigue calculations for the reactor vessel inlet and outlet nozzles.<sup>72</sup> Thus, Dr. Hopenfeld's challenges to the fatigue analyses for these components are outside the scope of this contention.

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<sup>67</sup> See Official Transcript of Proceedings, Indian Point Nuclear Generating Units 2 & 3 at 1266 (Oct. 15, 2012). The Commission has since criticized this practice in the context of similar rulings in this proceeding. See *Indian Point*, CLI-15-6, slip op. at 44 (noting the denial of motions *in limine* from the bench and with no explanation), 47 ("we find that its denial of the motion *in limine* in this instance resulted in a hearing beyond the scope of license renewal and constituted procedural error").

<sup>68</sup> Dr. Hopenfeld's 2015 Response Report at 17-18 (RIV000161).

<sup>69</sup> *Id.*

<sup>70</sup> See *Turkey Point*, CLI-01-17, 54 NRC at 9. Riverkeeper has argued that evidence is not subject to exclusion in a license renewal proceeding merely because it "touches upon" the CLB. See Riverkeeper Opposition to Metal Fatigue Motion in Limine at 11 (citing *Entergy Nuclear Vt. Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), Licensing Board Order (Ruling on Motions to Strike and Motions in Limine) at 10 (July 16, 2008) (unpublished)). Dr. Hopenfeld's testimony, however, does much more than "touch upon" the CLB, it directly challenges it. See Dr. Hopenfeld's 2015 Response Report at 17 (discussing Entergy's alleged failure to "justify . . . its reliance on CUFs of Record").

<sup>71</sup> See *Seabrook*, CLI-12-05, 75 NRC at 310 n.50 ("an admitted contention is defined by its bases").

<sup>72</sup> See Entergy's Metal Fatigue Rebuttal Motion in Limine at 13-14.



Accordingly, the Board should strike the portions of Dr. Hopenfled's testimony identified in Attachment 1, Table B as irrelevant to both NYS-26B/RK-TC-1B and NYS-38/RK-TC-5.

#### IV. CONCLUSION

For the foregoing reasons, the Board should exclude from the record the portions of Dr. Hopenfled's 2015 Response Report identified in Attachment 1. It should also strike the portions of the NYS-25 Reply SOP identified in Attachment 1.

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Dated in Washington, D.C.  
this 21st day of September 2015

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	September 21, 2015

**MOTION CERTIFICATION**

Pursuant to 10 C.F.R. § 2.323(b), counsel for Entergy certifies that beginning on the morning of September 18, 2015, he made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues, and he certifies that his efforts have been unsuccessful. The NRC Staff does not object to the filing of this Motion. New York State and Riverkeeper oppose the Motion. During consultations, counsel for NYS stated he recalled that the issue raised in this Motion regarding NYS-25 was previously raised at the very beginning of this proceeding, but did not provide any further specificity.

*Signed (electronically) by Raphael P. Kuyler*

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**ENTERGY’S MOTION TO STRIKE AND MOTION IN LIMINE TO EXCLUDE  
PORTIONS OF THE INTERVENORS’ REBUTTAL FILINGS ON TRACK 2 SAFETY  
CONTENTIONS**

**ATTACHMENTS**

<b>Attachment</b>	<b>No.</b>
Exclusion Chart.....	1

**ENTERGY'S MOTION TO STRIKE AND MOTION  
IN LIMINE TO EXCLUDE PORTIONS OF THE  
INTERVENORS' REBUTTAL FILINGS ON  
TRACK 2 SAFETY CONTENTIONS**

**ATTACHMENT 1**

Exclusion Chart

**Attachment 1 to Entergy's Motion to Strike and Motion in Limine to Exclude Portions of the Intervenor's Rebuttal Filings on Track 2 Safety Contentions**

**Exclusion Chart**

**Table A – Portions of NYS-25 Reply SOP to Be Stricken**

<b>Location of Information to Be Stricken</b>	<b>Basis for Exclusion</b>
Pages 12-13, paragraph beginning with, “Finally, Entergy’s submissions confirm . . .” and ending with “. . . rather than fix it.”	Irrelevant. Raises concerns regarding the Commitment 32 and the PTS TLAA for an RPV at IP3 plate that are outside the scope of the admitted contention.

**Table B – Portions of Dr. Hopenfeld’s 2015 Response Report to Be Excluded from the Evidentiary Record**

<b>Location of Information to Be Stricken</b>	<b>Basis for Exclusion</b>
Pages 15-17 (Section 6.3, titled “Tube-to-Tubesheet Welds”)	Irrelevant. Raises concerns about the approved H* license amendment incorporated into the IP2 CLB.
Pages 13-14 (starting with “Entergy’s witnesses continue to maintain . . .” and ending with “. . . managing metal fatigue at Indian Point.”)	Irrelevant. Argues that the scope of CUF fatigue analyses should be expanded beyond CLB locations.
Pages 17-18 (Section 7, titled “Reliance on CUFs of Record”)	Irrelevant. Raises concerns about CLB CUFs.

**UNITED STATES OF AMERICA  
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	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	September 21, 2015

**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of Entergy's Motion to Strike and Motion in Limine to Exclude Portions of the Intervenor's Rebuttal Filings on Track 2 Safety Contentions were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

*Signed (electronically) by Raphael P. Kuyler*

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