March 18, 2016

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/ 50-286-LR
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	

NRC STAFF'S ANSWER TO STATE OF NEW YORK'S
MOTION FOR LEAVE TO FILE CONTENTION NYS-40

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i), the Staff of the U.S. Nuclear Regulatory Commission ("NRC Staff" or "Staff") hereby files its answer to the State of New York's ("New York" or "State") motion for leave to file new Contention NYS-40, filed on February 22, 2016.[1] In its Motion, New York presents a legal challenge to the Staff's Draft Supplement (Volume 5) to the Final Supplemental Environmental Impact Statement ("FSEIS") for license renewal of Indian Point Units 2 and 3 ("Indian Point" or "IP2" and "IP3"),[2] asserting that the twelve Severe Accident Mitigation Alternatives ("SAMA") for IP2 and IP3 which were determined to be cost-beneficial in

[1] "State of New York Contention NYS-40" (Feb. 22, 2016) ("Contention NYS-40"). The State's filing was accompanied by the "State of New York Motion for Leave [to File] Contention NYS-40" (Feb. 22, 2016) ("Motion"). New York filed a supplement to its Motion on February 29, 2016, addressing the criteria in 10 C.F.R. § 2.309(f)(1). *See* attachment to letter from John Sipos to the Board (Feb. 29, 2016) ("New York Supplement").

[2] "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment," NUREG-1437, Supp. 38, Volume 5 (December 2015) ("Draft FSEIS Supplement"), Ch. 3 ("Revised SAMA Engineering Project Cost Estimates"), at 5 - 23.

the Draft FSEIS Supplement, must be implemented as a condition for license renewal.[3]

For the reasons set forth herein, the Staff submits that proposed Contention NYS-40 (1) fails to raise a genuine dispute on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi), (2) raises an issue that is outside the scope of this license renewal proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii), and (3) is untimely, contrary to 10 C.F.R. § 2.309(f)(2). Accordingly, Contention NYS-40 should be rejected.

BACKGROUND

This proceeding concerns the license renewal application ("LRA") submitted by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") on April 23, 2007, in which Entergy sought to renew the operating licenses for IP2 and IP3 for an additional period of 20 years. As part of its LRA, Entergy submitted an "Environmental Report" ("ER"), as required by 10 C.F.R. §§ 51.53(c) and 54.23, which included a SAMA analysis. On May 11, 2007, the NRC published a notice of receipt,[4] and on August 1, 2007, the NRC published a notice of acceptance for docketing and notice of opportunity for hearing on the LRA.[5] On November 30, 2007, petitions for leave to intervene were filed by various petitioners, including New York.[6] On July 31, 2008, the Board

---

[3] As discussed below, New York does not assert that the Staff has not satisfactorily explained its reasons for not requiring the implementation of cost-beneficial SAMAs as a condition of license renewal. *See* discussion *infra* at 16-17; Contention NYS-40 at 8.

[4] "Entergy Nuclear Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3; Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period," 72 Fed. Reg. 26,850 (May 11, 2007).

[5] "Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period," 72 Fed. Reg. 42,134 (Aug. 1, 2007).

[6] "New York State Notice of Intention to Participate and Petition to Intervene" (Nov. 30, 2007).

ruled on the petitioners' standing to intervene and the admissibility of their contentions, in which it, *inter alia*, granted New York's Petition and admitted many of its contentions.[7]

On December 22, 2008, the NRC issued Draft Supplement 38 to the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" ("GEIS"), NUREG-1437 (May 1996), in which it evaluated the site-specific environmental impacts of license renewal for IP2 and IP3, and presented its evaluation of the Applicant's SAMA analysis.[8] In discussing the potentially cost-beneficial SAMAs that had been identified, the DSEIS concluded that:

> [N]one of the potentially cost-beneficial SAMAs relate to adequately managing the effects of aging during the period of extended operation. Therefore they need not be implemented as part of the license renewal pursuant to 10 C.F.R. Part 54.[9]

On February 27, 2009, New York filed contentions challenging the Staff's Draft SEIS;[10] in that filing, New York amended SAMA contentions NYS-12 and NYS-16, but it did not challenge the Staff's conclusion that potentially cost-beneficial SAMAs that do not relate to managing the effects of aging need not be implemented as part of license renewal.

---

[7] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

[8] "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment," NUREG-1437, Supplement 38 (December 2008) ("Draft SEIS" or "DSEIS") (Ex. NYS000132A-D), § 5.2 at 5-4–5-10, and Appendix G thereto.

[9] Draft SEIS (Ex. NYS000132A-D), at 5-10. Following issuance of the Draft SEIS, the Board "reminded the parties that any new contentions may only deal with new environmental issues raised by the Draft SEIS. Tr. at 767-68. The Board will not entertain contentions based on environmental issues that could have been raised when the original contentions were filed." "Memorandum and Order (Summarizing Pre-Hearing Conference)" (Feb. 4, 2009), at 3; *see* Transcript of Pre-Hearing Conference (Jan. 14, 2009), at Tr. 768.

[10] *See* "State of New York Contentions Concerning NRC Staff's Draft Supplemental Environmental Impact Statement" (Feb. 27, 2009) ("DSEIS Contentions").

In November 2009, the Staff identified a discrepancy in the meteorological data inputs utilized by Entergy in its MACCS2 code SAMA analyses; the Applicant then committed to correct its MACCS2 code meteorological inputs, to re-run its SAMA analyses, and to provide the results of its SAMA reanalysis to the Staff.[11] On December 11, 2009, the Applicant submitted its SAMA Reanalysis to the NRC, using revised meteorological data inputs.[12]

On March 11, 2010, New York filed new Contentions NYS-35 and NYS-36,[13] in which it asserted for the first time, based on Entergy's SAMA Reanalysis, that (a) Entergy's analysis of various "potentially cost-beneficial" SAMAs was incomplete in the absence of engineering project cost analyses, and (b) any SAMAs that are "finally determined to be cost-effective" must be imposed as a condition for license renewal, or the Staff must provide a "rational basis" for not requiring such implementation.[14] On June 30, 2010, the Board issued LBP-10-13, in which it, *inter alia*, admitted those contentions and consolidated them into Contention NYS-35/36.[15] On

---

[11] *See* Letter from Paul Bessette, Esq. to the Board (Nov. 17, 2009), and attachments thereto.

[12] Letter from Martin J. O'Neill, Esq. to the Board (Dec. 14, 2009), enclosing Letter from Fred Dacimo (Vice President/License Renewal, Entergy Nuclear Northwest) to NRC Document Control Desk (Dec. 11, 2009) (Subject: License Renewal Application – SAMA Reanalysis Using Alternate Meteorological Tower Data, Indian Point Nuclear Generating Unit Nos. 2 & 3) ("SAMA Reanalysis") (ADAMS Accession No. ML093580089).

[13] "State of New York's New and Amended Contentions Concerning the December 2009 [SAMA] Reanalysis" (March 11, 2010) ("SAMA Reanalysis Contentions").

[14] SAMA Reanalysis Contentions, at 14, 15, 34, 40, and 41.

[15] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-10-13, 71 NRC 673 (2010). The Staff and Entergy had opposed the admission of NYS Contentions 35 and 36 on the grounds, *inter alia*, that they failed to satisfy the timeliness and good cause requirements of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2), in that New York had failed to challenge the same conclusion published in the DSEIS one year earlier. The Board rejected these assertions, finding that the information on which this conclusion relied was materially different than the information on which the DSEIS conclusion relied. LBP-10-13, 71 NRC at 696, 702.

July 15, 2010, Entergy and the Staff filed petitions seeking interlocutory review of LBP-10-13;[16] the Commission denied those petitions in CLI-10-30, finding that the petitions did not meet the standards for interlocutory review.[17]

In December 2010, the Staff published its Final SEIS (FSEIS Volumes 1-3), in which it, *inter alia*, presented its evaluation of Entergy's SAMA analysis, as revised in Entergy's SAMA Reanalysis;[18] further, in accordance with the Board's decision in LBP-10-13, the Staff provided an augmented explanation of its reasons for concluding that potentially cost-beneficial SAMAs which are unrelated to managing the effects of aging need not be implemented as a condition for license renewal of IP2 and IP3.[19] As it had done with respect to the DSEIS, New York filed contentions challenging portions of the Staff's FSEIS (in which it, *inter alia*, filed an amendment to SAMA Contention NYS-12),[20] but it did not challenge the Staff's augmented statement of its

---

[16] *See* (1) "NRC Staff's Petition For Interlocutory Review of the Atomic Safety and Licensing Board's Decision Admitting New York State Contentions 35 and 36 on Severe Accident Mitigation Alternatives (LBP-10-13)" (July 15, 2010); and (2) "Applicant's Petition for Interlocutory Review of LBP-10-13" (July 15, 2010).

[17] *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-10-30, 72 NRC 564, 568-69 (2010). In its decision, the Commission observed that the Staff's and Applicant's arguments "concerning the Board's importation of "Part 50 operating reactor oversight issues – going to the Indian Point reactors' current licensing basis – into a NEPA analysis and a Part 54 license renewal proceeding . . . are not without force. Portions of the Board's decision appear problematic, and may warrant our review later in the proceeding." *Id.* at 568. Finding, however, that the petitions did not satisfy the standards for interlocutory review, the Commission denied those petitions "without prejudice to Entergy's and the Staff's ability to file petitions for review following a final order by the Board." *Id.* at 569.

[18] "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), § 5.2 and Appendix G thereto.

[19] *See, e.g.,* FSEIS § 5.2 at 5-11 to 5-12; *cf.* Appendix G, at G-48 to G-49.

[20] *See* "State of New York New Contention 12-C Concerning NRC Staff's December-2010 Final Environmental Impact Statement and the Underestimation of Decontamination and Clean Up Costs Associated with A Severe Reactor Accident in the New York Metropolitan Area" (Feb. 3, 2011) ("FSEIS Contentions").

reasons for concluding that potentially cost-beneficial SAMAs that do not relate to managing the effects of aging need not be implemented as part of license renewal.

On January 14, 2011, New York filed a motion for summary disposition of Contention NYS-35/36;[21] Entergy and the Staff then filed cross-motions for summary disposition of that combined contention.[22] On July 14, 2011, the Board issued its decision in LBP-11-17, in which it (a) granted New York's motion for summary disposition and "dispose[d] of NYS-35/36 as a matter of law"; (b) denied Entergy's and the Staff's cross-motions for summary disposition; and (c) effectively terminated all further proceedings on this contention.[23] The Board ruled:

> [W]e *grant* New York's Motion and, in so doing, hold that, under NRC Regulations, the APA, and NEPA, Entergy's licenses cannot be renewed unless and until the NRC Staff reviews Entergy's completed SAMA analyses and either incorporates the result of these reviews into the FSEIS or, in the alternative, modifies its FSEIS to provide a valid reason for recommending the renewal of the licenses before the analysis of potentially cost-effective SAMAs is complete and for not requiring the implementation of cost-beneficial SAMAs.[24]

---

[21] "State of New York's Motion for Summary Disposition of Consolidated Contention NYS-35/36 (Jan. 14, 2011). While New York sought summary disposition of Contention NYS-35/36 (which was based on Entergy's December 2009 SAMA Reanalysis), it never amended the contention to address the Staff's augmented explanation, in the December 2010 FSEIS, of its reasons for not requiring the implementation of potentially cost-beneficial SAMAs.

[22] "Applicant's Consolidated Memorandum in Opposition to New York State's Motion for Summary Disposition of Contention NYS-35/36 and in Support of Its Cross-Motion for Summary Disposition" (Feb. 3, 2011); "NRC Staff's (1) Cross-Motion for Summary Disposition, and (2) Response to New York State's Motion for Summary Disposition, of Contention NYS-35/36 (Severe Accident Mitigation Alternatives)" (Feb. 7, 2011).

[23] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-11-17, 74 NRC 11 (2011).

[24] *Id.* at 27. The Board further explained its decision, as follows:

> By granting New York's Motion, we are not directing the implementation of any SAMA. Rather, we hold that the FSEIS must demonstrate that the NRC Staff has received sufficient information to take a hard look at SAMAs as required by 10 C.F.R. § 51.53(c)(3)(ii)(L), has in fact taken that hard look, and has adequately explained its

On July 29, 2011, Entergy filed a petition for review of LBP-11-17,[25] which the Staff supported.[26] On December 22, 2011, the Commission issued CLI-11-14, in which it denied Entergy's petition for review, finding that "Entergy's appeal is interlocutory in nature, and must await the Board's final decision in this proceeding."[27] On February 14, 2014, following the Board's issuance of its Partial Initial Decision (resolving nine "Track 1" contentions, including SAMA contentions NYS-12C and NYS-16B),[28] Entergy and the Staff again filed petitions for Commission review of the Board's decisions in LBP-10-30 and LBP-11-17; on February 18, 2015, the Commission granted those petitions.[29] The petitions are currently pending before the Commission.

Separately, in May 2013, the Applicant submitted a letter to the Staff (NL-13-075), reporting the results of its completed engineering project cost estimates for Severe Accident

---

> conclusions that may, but need not, include requiring the implementation of cost-effective SAMAs.

Id. (footnote omitted).

[25] "Applicant's Petition for Review of LBP-11-17 Granting Summary Disposition of Consolidated Contention NYS35/36" (July 29, 2011) ("Applicant's Petition").

[26] "NRC Staff's Answer to [Applicant's Petition]" (Aug. 11, 2011) ("Staff Answer to Petition").

[27] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 803 (2011).

[28] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-13-13, 78 NRC 246 (2013).

[29] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-3, 81 NRC 217 (2015). In its Memorandum and Order, the Commission requested further briefs on four questions (*id.* at 218-20), which the parties then filed, as directed. *See* (1) "NRC Staff's Response to the Commission's Memorandum and Order of February 18, 2015 (CLI-15-3), Regarding Contention NYS-35/36" (Mar. 30, 2015); (2) "Entergy Nuclear Operations, Inc. Reply Brief Related to Commission Questions in CLI-15-3 [ ]" (May 11, 2015); and (3) "State of New York Reply to NRC Staff's Response to Commission Order CLI-15-3 [ ]" (May 11, 2015).

Mitigation Alternatives ("SAMAs") that previously had been identified as potentially cost-beneficial.[30] 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.[31] In July 2014, the Staff informed that Board that it would present its evaluation of the Applicant's revised SAMA cost information in a further draft FSEIS Supplement.[32] On December 22, 2015, the Staff issued its second Draft Supplement to the FSEIS (Volume 5),[33] in which it, *inter alia,* provided its evaluation of the Applicant's revised engineering project cost information; revised its evaluation of the 22 potentially cost-beneficial SAMAs it had reviewed previously; identified 12 of those SAMAs as cost-beneficial (and identified two other SAMAs whose cost-benefit ratio warranted that they be included among the SAMAs to be considered further); and concluded, as it had concluded before, that inasmuch as none of those SAMAs relate to managing the effects of aging, they need not be implemented as a condition for license renewal.[34] On February 22,

---

[30] *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).

[31] On October 6, 2014, the Staff transmitted RAIs to the Applicant concerning its refined engineering project cost information; the Applicant submitted its responses on November 20, 2014. *See* Letter from Fred Dacimo (Entergy) to NRC Document Control Desk (NL-14-143) (Nov. 20, 2014) (ADAMS Accession No. ML14337A042).

[32] *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).

[33] The Staff had issued a previous FSEIS Supplement (Volume 4) in June 2013, which addressed other new information unrelated to the Applicant's SAMA analysis. *See* "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. Vol. 4 (June 2013) (ADAMS Accession No. ML13162A616).

[34] *See id.* at 5 – 23, and 128.

2016, New York filed Contention NYS-40, challenging the Staff's conclusion in the Draft FSEIS Supplement that the twelve cost-beneficial SAMAs described therein need not be implemented as a condition of license renewal.[35]

DISCUSSION

I. Legal Standards Governing the Admission of Late-Filed Contentions

The standards governing the admissibility of contentions filed after the initial deadline for filing (*i.e.,* "late-filed contentions") are well established, and have previously been addressed by this Board on numerous occasions.[36] In brief, the admissibility of late-filed contentions in NRC proceedings is governed by three regulations. These are: 10 C.F.R. § 2.309(f)(1), establishing the general admissibility requirements for contentions; 10 C.F.R. § 2.309(f)(2), concerning new and timely contentions; and 10 C.F.R. § 2.309(c), concerning non-timely contentions.[37]

First, a petitioner must show that its contention meets the general admissibility requirements of 10 C.F.R. § 2.309(f)(1). The requirements of this regulation were addressed at length by the Board in LBP-08-13, 68 NRC at 60-64. Specifically, in order to be admitted, a contention must satisfy the following requirements:

---

[35] The filing of New York's contention complied with the Board's directive 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 that information. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Granting Entergy's Motion [for] Clarification)" (July 9, 2013), at 3.

[36] *See, e.g.*, *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Denying Clearwater's Petition to File a New Contention)," dated May 28, 2009, at 2-4; *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Ruling on New York State's New and Amended Contentions)," dated June 16, 2009, at 2.

[37] *See Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Ruling on New York State's New and Amended Contentions)" (June 16, 2009) (unpublished), slip op. at 2; *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571-72 (2006).

> (f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
>
> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
>
> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1).

This Board has previously summarized the purpose for the contention filing requirements in § 2.309(f)(1), as follows:

> The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." The Commission has emphasized that the rules on contention admissibility are "strict by design." Failure to

> comply with any of these requirements is grounds for the dismissal of a contention.

Indian Point, LBP-08-13, 68 NRC at 61 (footnotes omitted);[38] 10 C.F.R. § 2.309(f)(1)(i)-(vi).

Second, a late-filed contention may be admitted as a timely new contention if it meets the requirements of 10 C.F.R. § 2.309(f)(2). Under this provision, a contention filed after the initial filing period may be admitted with leave of the Presiding Officer, if it meets the following requirements:

> (2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner may amend those contentions or file new contentions <u>if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly</u> from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that –
>
> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) <u>The information upon which the amended or new contention is based is materially different than information previously available</u>; and

---

[38] Similarly, long-standing Commission precedent establishes that contentions may only be admitted if they fall within the scope of issues set forth in the *Federal Register* notice of hearing and comply with the requirements of former § 2.714(b) (currently § 2.309(f)), and applicable NRC case law. *See, e.g., Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); *Duquesne Light Co.* (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973).

> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.[39]

Finally, a contention that does not qualify for admission as a new contention under 10 C.F.R. § 2.309(f)(2) may be admissible under the provisions governing non-timely contentions, set forth in 10 C.F.R. § 2.309(c)(1). As stated in § 2.309(c)(1), non-timely contentions "will not be entertained absent a determination by the . . . presiding officer . . . that the . . . contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular non-timely filing":

> (i) Good cause, if any, for the failure to file on time;
>
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
>
> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
>
> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
>
> (vi) The extent to which the requestor's/ petitioner's interests will be represented by existing parties;
>
> (vii) The extent to which the requestor's/ petitioner's participation will broaden the issues or delay the proceeding; and

---

[39] 10 C.F.R. § 2.309(f)(2) (emphasis added); *cf. Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998) ("intervenors must file their environmental contentions as soon as possible, even before issuance of the draft EIS, if the contested issue is addressed in the applicant's ER. *See* 10 C.F.R. § 2.714(b)(2)(iii)."). The provisions of former § 2.714(b)(2)(iii) are now codified in 10 C.F.R. § 2.309(f)(2).

> (viii) The extent to which the requestor's/ petitioner's participation may reasonably be expected to assist in developing a sound record.[40]

Pursuant to 10 C.F.R. § 2.309(c)(2), each of these factors is required to be addressed in the requestor's non-timely filing.[41]

Consistent with this established case law, any new or amended contentions must be rejected as untimely, to the extent that they raise matters which could have been raised previously and are not supported by a favorable balancing of the factors set forth in 10 C.F.R. § 2.309(c) or § 2.309(f)(2).[42]

II. Contention NYS-40 Fails to Satisfy the Criteria of 10 C.F.R. § 2.309(f)(1).

A. The Contention Fails to Raise a Genuine Dispute on a Material Issue of Fact or Law.

Overview

In Contention NYS-40, New York asserts as follows:

> The December 2015 NRC Staff Draft Supplemental Environmental Impact Statement's analysis and conclusions concerning site-specific Severe Accident Mitigation Alternatives ("SAMA") does not comply with the requirements of the National Environmental Policy Act ("NEPA") (sections 102(2)(c)(iii) and (2)(e)), the President's Council on Environmental Quality's

---

[40] *See Amergen Energy Co.* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 234 n.7 (2006).

[41] The first factor, whether good cause exists for the failure to file on time, is entitled to the most weight. *See, e.g., State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993). Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992), *quoting Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977).

[42] In the same manner, new or amended contentions concerning a draft EIS must address the new material in the Draft EIS to be considered timely. *See, e.g*., Pre-Hearing Conference Order at 3. To the extent that a late-filed new or amended contention raises a matter which the intervenor could have addressed previously, the contention should be deemed to be untimely. *See, e.g., Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998).

> regulations (40 C.F.R. section 1502.14), the Nuclear Regulatory Commission's regulations (10 C.F.R. sections 51.53 (c)(3)(ii)(l), 51.101, and 51.103), the Administrative Procedure Act (5 U.S.C. sections 553(c), 554(d), 557(c), and 706), or controlling federal court precedent (Limerick Ecology Action, Inc., v. NRC, 869 F.2d 719 (3d Cir. 1989)) because the SAMA analysis, even with Entergy and NRC Staff's revised financial inputs, identifies a number of site-specific mitigation alternatives and modifications that have greater benefits in excess of their costs but which are not being included as conditions of the proposed new operating licenses for the Indian Point facilities in this proceeding.[43]

In explaining the bases for its new contention, New York makes it clear that – in contrast to its previous contention (Contention NYS-35/36) – it does not contend here that the Staff lacked necessary factual information to support its environmental evaluation; to the contrary, New York observes that the Applicant's engineering project cost information upon which the Staff relied in the Draft FSEIS Supplement is now "complete,"[44] and it nowhere contests the adequacy of the

---

[43] Contention NYS-40, at 1 (capitalization omitted; emphasis added). Contention NYS-40 is nearly identical to Contention NYS-36, filed by New York in March 2010. That contention had asserted:

> The December 2009 Severe Accident Mitigation Alternatives ("SAMA") Reanalysis does not comply with the requirements of the National Environmental Policy Act (42 U.S.C. Sections 4332(C)(iii) and (2)(e)), the President's Council on Environmental Quality's regulations (40 C.F.R. Section 1502.14), the Nuclear Regulatory Commission's Regulations (10 C.F.R. Section 51.53(c)(3)(ii)(L)), the Administrative Procedure Act 5 U.S.C. Section 553(c), 554(d), 557(c), and 706 or controlling federal court precedent (*Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (3d Cir. 1989)) because this SAMA Reanalysis identifies a number of mitigation alternatives which are now shown, for the first time, to have substantially greater benefits in excess of their costs than previously shown yet are not being included as conditions of the proposed new operating license.

SAMA Reanalysis Contentions (March 11, 2010) at 36. Similarly, the Bases for Contention NYS-40 reiterate substantial portions of the legal analysis and discussion of Indian Point site characteristics that were presented in the Bases for Contention NYS-36. *Compare* Contention NYS-40 at 5-14 (¶¶ 11-29) *with* SAMA Reanalysis Contentions at 38-47 (¶¶ 6-26).

[44] Contention NYS-40, at 8 ("In the December 2015 DSEIS, NRC Staff now agrees that the engineering cost estimates are complete and that there are twelve cost-effective SAMAs"); *cf. id.* at 14.

Applicant's information or the Staff's evaluation thereof. Rather, Contention NYS-40 raises a purely legal issue, challenging the Staff's legal conclusion that because the 12 cost-beneficial SAMAs do not relate to managing the effects of aging, they need not be implemented as a condition for license renewal.[45]

Contention NYS-40 is significantly flawed in two respects, each of which requires that the contention be rejected for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi). *First,* while New York asserts that its new contention is founded upon the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 *et seq.,*[46] it incorrectly asserts that this statute, or any other authority cited in the contention, requires the implementation of cost-beneficial SAMAs when the NRC issues a renewed license, without regard to whether those SAMAs relate to managing the effects of aging.[47] *Second*, while New York correctly observes that NEPA and/or the Administrative Procedure Act ("APA") require the NRC to provide a rational explanation of its reasons for not requiring SAMA implementation,[48] it nowhere asserts that the augmented explanation provided by the Staff in the December 2010 FSEIS (which was left unmodified in the recent Draft FSEIS Supplement), is inadequate, nor did New York provide any reason to believe that the Staff's augmented explanation of its rationale was inadequate.[49]

---

[45] *Id.* at 8-9 (to require a SAMA analysis in a license proceeding that "does not result in the implementation of cost-effective SAMAs as part of that proceeding would seem to be a meaningless exercise. Yet, the December 2015 DSEIS fails to commit to implementing any cost-effective SAMAs at any point as part of this licensing proceeding.").

[46] *Id.* at 1 and 5-6.

[47] *See id.* at 1, 5-6, and 8-9.

[48] *Id.* at 7-8.

[49] As noted *supra* at 5-6 and n. 21, Contention NYS35/36 was based upon the Applicant's 2009 SAMA Reanalysis – and was never amended to challenge the Staff's augmented explanation of its

Moreover, the rejection of Contention NYS-40 – perhaps surprisingly – is actually consistent with the Board's rulings on Contention NYS-35/36. Thus. in granting summary disposition of that contention, the Board was careful to point out that it was not requiring the implementation of potentially cost beneficial SAMAs; instead, the Board explicitly recognized that if the Staff does not require the implementation of cost-beneficial SAMAs, it could satisfy its statutory and regulatory obligations "by providing an adequate explanation of its reasons for not requiring such implementation."[50] Indeed, the Commission described the distinction stated by the Board as "not unreasonable," in declining to grant interlocutory review of LBP-11-17.[51]

The Staff's December 2015 Draft FSEIS Supplement provided a detailed evaluation of the Applicant's revised SAMA cost information, and concluded that because the cost-beneficial SAMAs do not relate to managing the effects of aging, they need not be implemented as a condition of license renewal; further, the Draft FSEIS Supplement left in place, without modification, the detailed explanation of the Staff's reasons for not requiring implementation, set forth in the December 2010 FSEIS.[52] Significantly, Contention NYS-40 is altogether silent about

---

reasons for not requiring SAMA implementation, set forth in the Staff's December 2010 FSEIS.

[50] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-11-17, 74 NRC at 27; *see* discussion *supra* at 6. As noted *supra* at n. 23, the Board further stated that it was "not directing the implementation of any SAMA. Rather, we hold that the FSEIS must demonstrate that the NRC Staff . . . has adequately explained its conclusions that may, but need not, include requiring the implementation of cost-effective SAMAs."

[51] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC at 813.

[52] In its December 2010 FSEIS, the Staff restated and expanded upon the explanation of legal principles that had been provided in the DSEIS. It explained that "NEPA requires consideration of environmental impacts and alternatives, but does not require that SAMAs be imposed to redress environmental impacts." FSEIS § 5.2.6 at 5-11. The Staff further explained that potentially cost-beneficial SAMAs which are unrelated to license renewal requirements in 10 C.F.R. Part 54 (*i.e.,* managing the effects of aging), "would be considered, to the extent necessary or appropriate, under the agency's oversight of a facility's current operating license in accordance with 10 CFR Part 50 requirements, inasmuch as such matters would pertain not just to the period of extended operation but to operations under the current operating license term as well." *Id.* The Staff concluded its legal analysis,

stating "there is no regulatory basis to suggest that potentially cost-beneficial SAMAs that are unrelated to Part 54 requirements must be imposed as a backfit to the CLB, as a condition for license renewal." *Id.*

In addition, the FSEIS provided a further technical basis for not requiring Entergy to implement potentially cost-beneficial SAMAs as a condition for license renewal. In particular, the FSEIS stated:

> . . . SAMAs, by definition, pertain to severe accidents – i.e., those accidents whose consequences could be severe, but whose probability of occurrence is so low that they may be excluded from the spectrum of design basis accidents ("DBAs) that have been postulated for a plant (see GEIS §§ 5.3.2, 5.3.3, 5.4); this is consistent with the conclusions reached in § 5.2.2 of this SEIS concerning severe accidents at IP2 and IP3. The Commission has previously concluded, as a generic matter, that the probability-weighted radiological consequences of severe accidents are SMALL. GEIS § 5.5.2; 10 CFR Part 51, App. B, Table B1. As stated in §§ 5.1.1 and 5.1.2 above, no significant new information has been identified that would remove IP2 and IP3 from these generic determinations. Thus, there is no regulatory basis to impose any of the potentially cost-beneficial SAMAs as a condition for license renewal of IP2 and IP3 – even if those potentially cost-beneficial SAMAs are "finally" found to be cost beneficial.

FSEIS § 5.2.6, at 5-11 to 5-12. In brief, the Staff's FSEIS conclusions were supported by the following considerations:

(a) SAMAs, by definition, address mitigation alternatives for "severe accidents." *See* GEIS, § 5.4 ("Severe Accident Mitigation Design Alternatives (SAMDAs)"); *see* Transcript of Indian Point Teleconference, April 19, 2010, Tr. at 853-54 (Turk);

(b) The probability of occurrence of severe accidents is so low that they are excluded from the spectrum of design basis accidents ("DBAs") postulated for a plant. Tr. at 853-54 (Turk); *See generally,* GEIS, § 5.3.2 ("Design Basis Accidents") and § 5.3.3 ("Probabilistic Assessment of Severe Accidents"). (It should be noted that the GEIS discussion of postulated accidents included explicit consideration of Indian Point. *See, e.g.*, GEIS at 5-14, 5-15, 5-17, 5-22, 5-29, 5-34, 5-36, 5-38, 5-40, 5-43, 5-45, 5-47, 5-52, 5-85, 5-87, 5-88, and 5-97);

(c) The CDFs for severe accidents at IP2 and IP3 are quite low. As stated in the FSEIS, the baseline core damage frequency ("CDF") for all of the postulated internally-generated severe accidents at Indian Point, combined, is approximately 1.79×10^{-5} per year for IP2 and 1.15×10^{-5} per year for IP3. Entergy performed separate assessments of the CDF from external events, and accounted for the potential risk benefits associated with such events by multiplying the internally-initiated CDFs by a factor of approximately 3.8 for IP2 and 5.5 for IP3. FSEIS at 5-5. The CDFs for each specific initiating event are provided in FSEIS Table 5-3. *See* FSEIS at 5-6;

(d) The Commission has determined, as a generic matter, that the probability-weighted radiological consequences of severe accidents, for all plants, are "SMALL"; 10 C.F.R. Part 51, App. B., Table B-1 ("Postulated Accidents"); GEIS, § 5.5.2 ("Impacts from Severe Accidents"); and

(e) No significant, new information has been identified that would remove IP2 and IP3 from these generic determinations. FSEIS, § 5.1.1 at 5-3, § 5.1.2 at 5-3 to 5-4.

the Staff's explanation of its reasons for not requiring SAMA implementation, and it nowhere asserts that the Staff's explanation is inadequate.[53] Inasmuch as the Staff has provided a detailed (and unchallenged) explanation of its reasons for not requiring the implementation of these SAMAs, nothing further is required under NEPA, the APA, or any other authority. Accordingly, Contention NYS-40 should be rejected for failing to raise a genuine dispute on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Legal Analysis

It is well-established that an intervenor who files a contention must "provide sufficient alleged factual or legal bases to support the contention."[54] New York erroneously cites NEPA, the Administrative Procedure Act, CEQ regulations, NRC regulations, and federal court precedent in support of its assertion that cost-beneficial SAMAs must be imposed as license conditions.[55] None of those authorities support that proposition. Accordingly, Contention NYS-40 lacks any basis in law and is inadmissible.

An environmental impact statement is the document through which the NRC satisfies the requirements of NEPA for license renewal of nuclear power plants. Under NEPA, a federal agency is required to take a "hard look" at the environmental impacts of major federal actions that could significantly affect the human environment.[56] Importantly, NEPA does not require any specific outcome nor does it mandate a course of action requiring the mitigation of potential

---

[53] *See e.g.,* Contention NYS-40 at 7-8, ¶¶ 19-20.

[54] *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004); *see* 10 C.F.R. § 2.309(f)(1)(ii).

[55] Contention NYS-40 at 1 and 5-8.

[56] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 339 (1989).

environmental impacts.[57]

The Supreme Court directly considered whether NEPA requires the mitigation of potential environmental impacts in *Methow Valley*. There, the Court noted that while NEPA announced sweeping policy goals, "NEPA itself does not mandate particular results, but simply prescribes the necessary process."[58] As the Court further stated, "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs."[59] In light of these principles, the Court found:

> [There is a] fundamental distinction … between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted on the other.[60]

Thus, the Court concluded that the lower court had erred "in assuming that NEPA requires that

---

[57] *See, e.g., Baltimore Gas and Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983), *quoting Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976) (stating that NEPA requires "only that the agency take a 'hard look' at the environmental consequences before taking a major action); *Sierra Club v. Army Corps of Engineers*, 446 F.3d 808, 815 (2006) (same); *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998) (same); *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), LBP-06-19, 64 NRC 53, 63-64 (2006) (same); *see also Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008) ("NEPA imposes only procedural requirements" and does not mandate any particular results).

[58] *Methow Valley,* 490 U.S. at 350, *citing Stryker's Bay Neighborhood Council, Inc. v. Karlen,* 444 U.S. 223, 227-28 (1980) and *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 558 (1978).

[59] *Id.*, *citing Stryker's Bay Neighborhood Counci*l, 444 U.S. at 227-28, *quoting Kleppe v. Sierra Club,* 427 U.S. 390, 410 n.21 (1976).

[60] *Id*. at 352. The Court found no requirement in NEPA "that action be taken to mitigate the adverse effects of major federal actions," ruling that "it would be inconsistent with NEPA's reliance on procedural mechanisms — as opposed to substantive, result-based standards — to demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act." *Id*. at 353.

action be taken to mitigate the adverse effects of major federal actions."[61]

The Commission has previously observed, in this proceeding, that NEPA does not require the implementation of cost-effective SAMAs. Thus, in CLI-11-14 (declining to undertake interlocutory review of LBP-11-17), the Commission noted that the Board had not actually required the implementation of cost-beneficial SAMAs, but had offered the Staff an alternative. The Commission observed as follows:

> [W]e note that NEPA is a procedural statute--although it requires a "hard look" at mitigation measures, it does not, in and of itself, provide the statutory basis for their implementation. In granting New York's motion for summary disposition of Contention NYS-35/36, the Board was careful not to require that the Staff impose the cost-beneficial SAMAs as a condition on the renewal of Entergy's licenses. Rather, it provided the Staff with an option to explain further its reasoning for not requiring implementation of cost-beneficial SAMAs in the context of this license renewal review. To the extent the Board would have the Staff elaborate on its analysis, the Board's decision, in our view, does not appear patently unreasonable.[62]

Similarly, this Board has applied the Supreme Court's decision in *Methow Valley,* in ruling on the admissibility of contentions in LBP-08-13. There, in limiting the admissibility of Clearwater Contention EC-3, the Board observed as follows:

> NEPA does not require that a federal agency take any particular action. It does, however, require that the federal agency take a "hard look" at the environmental impact its proposed action could have before the action is taken, and to document what it has done. . . . [T]he goals of NEPA are to inform federal agencies and the public about the environmental effects of proposed projects. *See Robertson*, 490 U.S. at 339.[63]

---

[61] *Id*. at 353 (internal quotations omitted).

[62] CLI-11-14, 74 NRC at 813.

[63] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 201 n.1038 (2008).

Because NEPA imposes no obligation on the NRC to mitigate adverse environmental impacts, it does not require the NRC to require the Applicant to implement cost-beneficial SAMAs as a condition for license renewal. While New York correctly states that the APA requires that agencies state a rational basis for their actions,[64] this general legal principle does not require that cost-beneficial SAMAs be imposed as license conditions. The Staff's FSEIS of December 2010 and its Draft FSEIS Supplement of December 2015 provided thorough evaluations of the IP2/IP3 SAMAs, as well as an augmented, rational basis for the Staff's determination that the cost-beneficial SAMAs that were identified for IP2 and IP3 need not be implemented as a condition for license renewal. In Contention NYS-40, New York did not identify any deficiency in the Staff's analysis or in its stated reasons for not requiring SAMA implementation; rather, it asserted, in essence, that a severe accident at Indian Point could result in significant adverse impacts,[65] and it disagreed with the Staff's determination that the implementation of the identified SAMAs as a condition for license renewal was not required by applicable law and regulations. New York, however, pointed to nothing in NEPA or the APA that provides any legal basis for its claims.

New York's reliance on the *Limerick* decision[66] is also misplaced. In *Limerick,* the Third Circuit ruled that the NRC must evaluate the environmental impacts of severe accident mitigation design alternatives.[67] Nowhere in *Limerick* did the Third Circuit require or suggest

---

[64] Contention NYS-40, at 1 and 7-8.

[65] *Id.* at 10-14.

[66] Contention NYS-40, at 1, *citing Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719 (3d Cir. 1989).

[67] *Limerick,* 869 F.2d at 741.

that SAMAs must be implemented as license conditions.

In addition, New York Contention 35 assumes, erroneously, that the Council on Environmental Quality ("CEQ") regulations require the NRC to impose SAMAs as license conditions. New York asserts that the Staff's determination not to require implementation of the 12 cost-beneficial SAMAs as license conditions violates the CEQ's regulations in 40 C.F.R. § 1502.14.[68] However, the NRC, as an independent agency, is not bound by CEQ regulations that might have a substantive impact on the way in which the Commission performs its regulatory functions. Moreover, while it is the Commission's announced policy to "take account" of the CEQ regulations "voluntarily," 10 C.F.R. § 51.10(a), and to this end, the NRC has promulgated its regulations in 10 C.F.R. Part 51, the NRC is not bound to comply with CEQ regulations.[69] Thus, to the extent that Contention 35 asserts that any NRC action in this matter is in violation of the CEQ regulations, it is entirely without legal basis.

New York's reliance on 10 C.F.R. § 51.53(c)(3)(ii)(L)[70] is similarly misplaced. That regulation requires that the Staff "consider" SAMAs in its environmental assessment or environmental impact statement, if it has not considered SAMAs for the plant previously. Nothing in the regulation requires the imposition of cost-beneficial SAMAs as license conditions.

Likewise, the regulatory guidance documents that New York cites[71] (Regulatory

---

[68] Contention NYS-40, at 1.

[69] *Pacific Gas and Electric Co*. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427; 443-44 (2011).

[70] *Id.* at 1, 5, 8 and 13.

[71] *Id.* at 7.

Guide 4.2 Supplement 1,[72] NUREG/BR-0058,[73] and NUREG-1555[74]), do not support Contention NYS-40. In this regard, RG 4.2, Supplement 1, "provides guidance on the format and content" of an environmental report submitted as part of a license renewal application, to "help ensure the completeness of the information provided, [to] assist the NRC staff and others in locating the information, and [to] shorten the review process."[75] New York's reliance on page 4.2-S-50 of RG 4.2 Supp. 1 is misplaced, as that discussion merely describes the analytical steps and methodology that should be presented in a SAMA analysis, and recommends that the applicant should "[l]ist plant modifications and procedural changes (<u>if any</u>) that have or will be implemented to reduce the severe accident dose consequence risk."[76] RG 4.2 Supp. 1 does not require the implementation of any SAMAs – nor could it do so, as it is a regulatory guide, only.

New York's reliance on other regulatory guidance documents is similarly misplaced.[77] NUREG/BR-058 is a regulatory guide of general applicability. It does not address SAMAs specifically, and New York points to no provision in the guide in support of its position. NUREG-1555 is the NRC's Standard Review Plan ("SRP") for SAMAs; it provides guidance for the Staff's environmental review of licensing actions and describes the review which the Staff should perform of an applicant's "methods for identifying the potential mitigation alternatives,"

---

[72] "Supplement 1 to Regulatory Guide 4.2, Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses" (Sept. 2000) ("RG 4.2 Supp. 1").

[73] NUREG/BR-0058, Rev. 4, *Regulatory Analysis Guidelines of the US Nuclear Regulatory Commission*, (Sept. 2004) (ADAMS Accession No. ML042820192).

[74] NUREG-1555, Supp. 1, NRC Environmental Standard Review Plan for Severe Accident Mitigation Alternatives (March 2000) (ADAMS Accession No. ML003702019).

[75] RG 4.2 Supp. 1, at 4.2-S-1.

[76] *Id.* at 4.2-S-50; emphasis added.

[77] Contention NYS-40 at 1 and 7.

the range of mitigation alternatives identified, the applicant's bases for estimating SAMA costs and benefits, and the reasonableness of its estimates.[78] The SRP further states: "Any mitigation should be described along with the estimated benefit-cost ratio . . . . The . . . SEIS should identify the mitigative measures considered and committed to by the applicant."[79] Finally, the guidance states that, if SAMAs were not considered previously for the plant, the SEIS should include a "statement similar to the following":

> The staff has concluded that the applicant completed a comprehensive, systematic effort to identify and evaluate the potential plant enhancements to mitigate the consequences of severe accidents. The staff has considered the robustness of this conclusion relative to critical assumptions in the analysis—specifically the impact of uncertainties in the averted offsite risk estimates and the use of October 1999 5.1.1-9 NUREG-1555, Supplement 1 alternative benefit-cost screening criteria. The staff has concluded that the findings of the analysis would be unchanged even considering these factors. Therefore, the staff concludes that the mitigation alternatives committed to by the applicant are appropriate, and no further mitigation measures are warranted.

Id. at 5.1.1.8 – 5.1.1.9. Thus, the SRP does not compel mitigation, it simply instructs the Staff to describe any mitigation that the applicant has committed to undertake.[80] Moreover, the SRP – as a Staff guidance document – could not impose regulatory requirements such as compelling the imposition of SAMAs as license conditions. In sum, the SRP does not support New York's position that cost-beneficial SAMAs must be imposed as conditions for license renewal.

---

[78] NUREG-1555, Supp. 1 at 5.1.1-7 – 5.1.1-8.

[79] *Id.* at 5.1.1-8.

[80] *Id*. If the Staff views that mitigation as appropriate and that no further mitigation is warranted, the Staff may conclude "that the mitigation alternatives committed to by the applicant are appropriate, and no further mitigation measures are warranted." While this language suggests that the Staff may identify other mitigation alternatives as appropriate or warranted, the SRP does not establish a regulatory basis to require an applicant to implement the SAMAs that have been determined to be cost-beneficial.

For all of the above reasons, Contention NYS-40 fails to raise a genuine dispute of a material issue of fact and law, contrary to 10 C.F.R. § 2.309(f)(1)(vi). It should therefore be rejected.[81]

B. Contention NYS-40 Impermissibly Raises an Issue that Is Outside the Scope of the Proceeding.

The regulations in 10 C.F.R. Part 54 establish the safety issues that need to be addressed for license renewal. As indicated therein, the scope of license renewal encompasses only age-related degradation during the period of extended operations. Issues that relate to the current licensing basis are outside the scope of license renewal proceedings.[82] Indeed, this Board has previously rejected numerous contentions on this basis.[83]

Moreover, the Commission has explicitly recognized that potentially cost-beneficial SAMAs will not be imposed as a condition of license renewal unless they relate to adequate management of the effects of aging during the period of extended operation. Thus, in the *Pilgrim* license renewal proceeding, the Commission observed that the applicant had identified

---

[81] The Staff further notes that a questions exists, as well, as to whether the Board has subject matter jurisdiction over the concerns raised in Contention NYS-40, inasmuch as the same issue raised in this contention was also raised in Contention NYS-36, which is now under Commission review. Moreover, considerations of comity suggest that it may be appropriate for the Board to refer New York's new contention to the Commission, or to hold the contention in abeyance pending issuance of the Commission's decision on the Applicant's and Staff's pending appeals from LBP-10-30 and LBP-11-17. *See generally, Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB-350, 4 NRC 365, 366 (1976); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-85-14, 22 NRC 177, 179 (1985).

[82] 10 C.F.R. § 54.29 and *see Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 8-10 (2001).

[83] *See Indian Point,* LBP-08-13, 68 NRC at 73, 75-76, 118-19, 122, 123-24and 149-50. For example, the Board rejected Contention NYS-20 because it found the contention's challenge "relating to the NRC Staff's decision to grant Entergy the exemption from a one-hour [fire] barrier to a twenty-four/thirty minute barrier is a direct challenge to [the Applicant's] CLB (current licensing basis) and unrelated to the effects of plant aging and the LRA." *Id.* at 122.

"seven potentially cost-effective SAMAs," but because none of those SAMAs bear on adequately managing the effects of aging, "none need by implemented as part of the license renewal safety review, pursuant to 10 CFR Part 54."[84]

Nor is this a new approach. The Commission previously observed that SAMAs that do not relate to managing the effects of aging are inappropriate for consideration in a Part 54 licensing proceeding, but instead should be considered as current operating license issues. Thus, in *McGuire/Catawba*,[85] the Commission cited the Staff's Draft SEIS conclusion that "'this SAMA does not relate to adequately managing the effects of aging during the period of extended operation,'" and "'[t]herefore, it need not be implemented as part of license renewal pursuant to 10 CFR Part 54.'"[86] Rather, the Commission observed, the agency's decision to require a plant "to implement any particular SAMA will fall under a Part 50 current licensing basis review."[87] Further, the Commission noted that:

> [Consideration of the SAMA] will fall under a Part 50 current licensing basis review. NEPA "does not mandate the particular decisions an agency must reach," only the "process the agency must follow while reaching its decisions." *Committee to Save the Rio Hondo and Lucero*, 102 F.2d 445, 448 (10th Cir. 1996) (*citing*

---

[84] *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 293-94 n.26 (2010).

[85]. *Duke Energy Corp*. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 387-88 (2002).

[86] *McGuire/Catawba,* CLI-02-28, 56 NRC at 388 n.77. The Commission concluded, the "need for plant design and procedural changes will be resolved as part of GSI-189 and addressed . . . as a current operating license issue. . . . Thus, the ultimate agency decision on whether to require facilities with ice condenser containments to implement any particular SAMA will fall under a Part 50 current licensing basis review." *Id.*; emphasis added. Similarly, if the Commission's post-Fukushima studies point to the need to make any plant design and procedural changes that Entergy has identified as potentially cost-beneficial SAMAs, those matters would be addressed as part of the Commission's Order (EA-12-049) and the follow-on rulemaking. *See* Proposed Rule, "Station Blackout," 77 Fed. Reg. 16175 (Mar. 20, 2012).

[87] *McGuire/Catawba,* 56 NRC at 388 n.77.

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989).[88]

As indicated in the Commission's decisions cited above, backfits for SAMAs that do not relate to managing the effects of aging are evaluated by the Staff as part of its Part 50 reactor oversight process rather than in its Part 54 license renewal review – since any such backfits would be important, not only for operations under a renewed license, but with respect to the current operating license as well. This approach is fully consistent with the Commission's explicit limitation on the scope of license renewal reviews.[89] Thus, if the Staff determines that a non-aging related backfit may be appropriate, it could undertake a backfit review under the existing (or later, a renewed) license – and the results of that review would also apply to the renewed license, if any. The backfit review function, however, is separate from the Staff's review of license renewal applications. Contrary to New York's reading of 10 C.F.R. Parts 51 and 54, nothing in those regulations requires the implementation of non-aging related cost-beneficial SAMAs as a condition for license renewal.

---

[88] *Id.*

[89] In adopting its license renewal regulations, the Commission endorsed the principle that "issues that are material as to whether a nuclear power plant operating license may be renewed should be confined to those issues that are uniquely relevant to protecting the public health and safety and common defense and security during the renewal period." Final Rule, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991). Only issues that are unique to the period of extended operation, such as "age-related degradation unique to license renewal" are to be addressed for license renewal. *Id.* at 64,947. Other issues "that are relevant to both current plant operation and operation during the extended period must be addressed now within the present license term rather than at the time of renewal" -- which would assure that safety or security issues pertinent to current reactor operations are not left unresolved until a licensee seeks license renewal and the Commission issues its renewal decision. *Id.,* at 64,946. In sum, "the NRC's decision should normally be limited to whether actions have been identified and have been or will be taken to address age-related degradation unique to license renewal and whether the relevant [NEPA] requirements, as set forth in 10 CFR part 51, have been met." *Id.* at 64,960-61; *Turkey Point*, CLI-01-17, 54 NRC at 9-10; *Dominion Nuclear Connecticut, Inc*. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560-61 (2005). This regulatory approach applies to both safety and environmental issues. *See* Final Rule, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,481 (May 8, 1995).

As the Staff explained in both the December 2010 FSEIS and the December 2015 Draft FSEIS Supplement, none of the cost-beneficial SAMAs identified for IP2 and IP3 relate to managing the effects of aging. Rather, the SAMAs relate to existing systems, structures and components ("SSCs") and plant procedures that are in place under the plants' current operating licenses, for it is those existing features and procedures that would be modified by the SAMAs.[90] While cost-beneficial SAMAs might be considered for implementation under the existing IP2 and IP3 licenses, the implementation of these SAMAs is not required as a condition for license renewal under the Commission's regulations in 10 C.F.R. Part 54.

Given the limited scope of license renewal, the Applicant and Staff have both concluded that because "none of the potentially cost-beneficial SAMAs relate to adequately managing the effects of aging during the period of extended operation, . . . they need not be implemented as part of the license renewal pursuant to 10 CFR Part 54.[91] In essence, Contention NYS-40 reflects New York's fundamental disagreement with the NRC's determination to limit the scope of the license renewal to age-related degradation and, specifically, the application of that limitation with respect to the implementation of SAMAs. The State's view, however, is simply contrary to applicable law.

While Contention NYS-40 expresses the State's concern over the adverse impacts that a severe accident could have on people and property near the Indian Point site, its effort to impose the 12 cost-beneficial SAMAs as a condition for license renewal lacks legal basis. In this regard, New York erroneously conflates 10 C.F.R. Part 54 license renewal requirements and related Part 51 environmental reviews, with 10 C.F.R. Part 50 regulations governing

---

[90] *See, e.g.*, FSEIS at 5-9 – 5-10; Draft FSEIS Supplement at 10-11 and 19.

[91] DSEIS at 5-10, *see* SAMA Reanalysis at 32.

backfits to an operating reactor's current licensing basis ("CLB").[92] New York's attempt to require the implementation cost-beneficial SAMAs that are unrelated to managing the effects of aging as a condition for license renewal, not only lacks legal basis, it impermissibly raises an issue that pertains to the plants' existing operating licenses and is outside the scope of this license renewal proceeding. Contention NYS-40 thus contravenes the provisions of 10 C.F.R. § 2.309(f)(1)(iii) and should be rejected.

III. Contention NYS-40 Should Be Rejected as Untimely.

As discussed above, the issues raised in Contention NYS-40 could have been – and (at one point) were – raised substantially earlier. Thus, New York raised the same concerns in Contention NYS-36, concerning the Applicant's 2009 SAMA Reanalysis – and it could have (but did not) raise these concerns with respect to the Applicant's April 2007 Environmental Report ("ER"), and the Staff's December 2008 Draft SEIS or December 2010 FSEIS, both of which included the Staff's conclusion that potentially cost-beneficial SAMAs that do not relate to managing the effects of aging "need not be implemented" as a condition of license renewal.[93] Accordingly, Contention NYS-40 should be rejected on the grounds that it was untimely and does not satisfy 10 C.F.R. § 2.309(f)(2), and a balancing of the "good cause" and other factors specified in 10 C.F.R. § 2.309(c)(1) does not favor its admission.

---

[92] The Commission's regulations impose strict requirements for the conduct of a backfit analysis, as set forth in 10 C.F.R. §§ 50.109(a)(2)-(4), (c) and (e). A backfit may be required without a backfit analysis if the Commission or staff determines that "a modification is necessary to bring a facility into compliance with a license or [the CLB]," or that action is necessary to ensure adequate protection of public health and safety and the common defense and security, 10 C.F.R. § 50.109(a)(4); otherwise, a backfit may be required when the Commission determines, based on a backfit analysis, "that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection." 10 C.F.R. § 50.109(a)(3).

[93] DSEIS at 5-10; FSEIS at 5-11 – 5-12.

Indeed, a comparison of the Draft FSEIS Supplement with the ER, the Applicant's 2009 SAMA Reanalysis, the DSEIS and the FSEIS, shows that the issues raised in Contention NYS-40 pertain to statements that also appeared in each of those earlier documents. The information relied upon by the State is therefore "old" information, which could have been addressed by the State previously.

For example, in its 2007 ER, the Applicant identified a set of potentially cost-beneficial SAMAs, and then stated as follows:

> The above SAMA candidates for IP2 and IP3 do not relate to adequately managing the effects of aging during the license renewal period. . . . Although not related to adequately managing the effects of aging during the period of extended operation, the above, potentially cost-beneficial SAMAs have been submitted for detailed engineering project cost-benefit analysis. [94]

Thus, the Applicant's ER stated that the SAMA candidates did not address the effects of aging and were being submitted for detailed engineering project cost-benefit analysis – but it did not commit to implement the SAMA candidates or to adopt them as license conditions.

In the DSEIS, the Staff agreed with the Applicant's determination in the ER that further evaluation of the SAMAs was warranted outside of the license renewal arena, and stated that because the potentially cost-beneficial SAMAs did not address age-related degradation, they would not be required to be implemented in connection with license renewal. The Staff stated:

> Given the potential for cost-beneficial risk reduction, the staff considers that further evaluation of these SAMAs by Entergy is warranted. <u>However, none of the potentially cost-beneficial SAMAs relate to adequately managing the effects of aging during the period of extended operation. Therefore, they need not be implemented as part of the license renewal pursuant to 10 CFR Part 54.</u> [95]

---

[94] ER at 4-73; emphasis added.

[95] DSEIS at 5-10 (emphasis added).

In its December 2009 SAMA Reanalysis, the Applicant repeated its prior statement that potentially cost-beneficial SAMAs were being submitted for further cost-benefit analysis, and further stated that because the effects of aging were being addressed by existing programs without the implementation of the SAMAs, the SAMAs need not be implemented as part of license renewal. The Applicant stated:

> As described in the aging management review results for the integrated plant assessment presented in Section 3.1 through 3.6 of the license renewal application, IP2 and IP3 have programs for managing aging effects for components within the scope of license renewal (Reference 1). Since these programs are sufficient to manage the effects of aging during the license renewal period without implementation of the above SAMA candidates for IP2 and IP3, these potentially cost beneficial SAMAs need not be implemented as part of license renewal pursuant to 10 CFR Part 54. However, consistent with those SAMAs identified previously as cost beneficial, the above potentially cost beneficial SAMAs have been submitted for engineering project cost benefit analysis. [96]

Lastly, in the FSEIS, the Staff provided a detailed evaluation of the Applicant's SAMA analysis (as revised in the 2009 SAMA Reanalysis), and provided an augmented explanation of its reasons for not requiring the implementation of the potentially cost-beneficial SAMAs as condition of license renewal. In this regard, the Staff stated, *inter alia*, that because "none of the potentially cost-beneficial SAMAs relate to adequately managing the effects of aging during the period of extended operation . . . they need not be implemented as part of IP2 and IP3 license renewal pursuant to 10 CFR Part 54."[97]

---

[96] SAMA Reanalysis at 32. As discussed above, the Applicant's 2009 SAMA Reanalysis was the subject of Contention NYS-35/36.

[97] FSEIS § 5.2.6 at 5-11. The Staff explained that "NEPA requires consideration of environmental impacts and alternatives, but does not require that SAMAs be imposed to redress environmental impacts." FSEIS § 5.2.6 at 5-11. The Staff further explained that potentially cost-beneficial SAMAs which are unrelated to license renewal requirements in 10 C.F.R. Part 54 (*i.e.*, managing the effects of aging), "would be considered, to the extent necessary or appropriate, under the agency's oversight of a facility's

As the above comparison shows, the position stated in the Staff's Draft FSEIS Supplement of December 2015 was not new or materially different from the Staff's prior positions or the positions stated in the Applicant's 2007 ER and 2009 SAMA Reanalysis. The Draft FSEIS Supplement did not modify the conclusions stated in the December 2010 FSEIS, and, indeed, left those statements intact.[98] The only difference between the Draft FSEIS Supplement and the earlier documents is that the Staff has now reviewed the Applicant's final engineering project cost information and concluded that the final list of cost-beneficial SAMAs --- all of which had been identified in the Applicant's and Staff's previous documents – do not relate to managing the effects of aging and therefore need not be implemented as part of license renewal.

In this regard, the Commission has rejected the idea that publication of a new document can transform previously available material into new information sufficient to support a new contention.[99] In *Oyster Creek*, the intervenors tried, unsuccessfully, to link their contentions to information that was highlighted in presentations and studies conducted and released between

---

current operating license in accordance with 10 CFR Part 50 requirements, inasmuch as such matters would pertain not just to the period of extended operation but to operations under the current operating license term as well." *Id*. The Staff concluded its legal analysis, stating, "there is no regulatory basis to suggest that potentially cost-beneficial SAMAs that are unrelated to Part 54 requirements must be imposed as a backfit to the CLB, as a condition for license renewal." *Id.* Finally, the FSEIS found no reason to exclude IP2 and IP3 from the Commission's generic determinations regarding the probability-weighted consequences of severe accidents, and concluded that "there is no regulatory basis to impose any of the potentially cost-beneficial SAMAs as a condition for license renewal of IP2 and IP3 – even if those potentially cost-beneficial SAMAs are "finally" found to be cost beneficial." *Id*. at 5-11 to 5-12.

[98] *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-79, 16 NRC 1116, 1118 (1982) (a contention based on dose calculations in a draft EIS was ruled untimely where the dose calculation was published months earlier in the applicant's safety analysis).

[99] *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 272-73 (2009) (affirming the Board's order denying multiple late-filed contentions).

October 2006 and January 2007.[100] The Commission agreed with the Board's finding that the information underlying the intervenors' late-filed contentions had been available from at least 1991, holding that the contention should have been filed as part of the original petition to intervene and that it was untimely filed. *Id.* In sum, whether information is new is not determined by the date the petitioner discovers the information or realizes its significance, but by the date on which the information became available to the intervenor.[101]

Finally, while the Draft FSEIS Supplement provides the Staff's evaluation of cost-beneficial SAMAs, those same SAMAs were addressed in the Applicant's 2009 SAMA Reanalysis, upon which Contention NYS-36 was based. While the precise cost-benefit ratios have changed based upon the Staff's review of the Applicant's revised engineering project cost information, that information did not alter the legal conclusion that is once again challenged by New York in Contention NYS-40. Thus, the specific statements challenged by the State had appeared in the Applicant's and Staff's previous publications; these issues did not "arise out of" the Draft FSEIS Supplement,[102] and the fact that the Draft FSEIS Supplement repeated those legal conclusions fails to provide an acceptable basis for the State to file what would otherwise

---

[100] *Id.* at 272-74.

[101] *Union of Concerned Scientists v. NRC,* 920 F.2d 50, 55 (D.C. Cir. 1990) ("we think it unreasonable to suggest that the NRC must disregard its procedural timetable every time a party realizes based on NRC environmental studies that maybe there was something after all to a challenge it either originally opted not to make or which simply did not occur to it at the outset"); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 126 (2009) (petitioner could not justify good cause for a late filed contention on information that was previously reasonably available to the public but only recently discovered by the petitioner).

[102] "Order (Granting New York's Motion to Establish February 25, 2010 As the Date By Which New York May File Contentions Related to Entergy's Revised Submission Concerning Severe Accident Mitigation Alternatives)" (Jan. 22, 2010), at 2.

be an untimely new contention.[103] Accordingly, good cause for the late filing of these contentions, required by 10 C.F.R. § 2.309(c)(1), is lacking.[104]

CONCLUSION

For all of the foregoing reasons, the Staff respectfully submits that Contention NYS-40 should be rejected.

Respectfully submitted,

/Signed (electronically) by/

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of March 2016

[103] The Staff recognizes that the Board previously rejected the Staff's and Entergy's views that Contentions NYS-35 and NYS-36 failed to satisfy the timeliness and good cause requirements of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2), in that New York had failed to challenge the same conclusion in the DSEIS, published one year prior to the 2009 SAMA Reanalysis (upon which those contentions were based). In this regard, the Board found that the information on which the Applicant's conclusion relied was materially different than the information on which the DSEIS conclusion had relied. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-10-13, 71 NRC 673, 696, 702 (2010). The Staff respectfully submits that the stated rationale does not apply to the legal conclusion stated in the Draft FSEIS Supplement, inasmuch as that conclusion rests on the nature of the identified SAMAs rather than any new information. Thus regardless of the specifics of the engineering project cost information considered in the Draft FSEIS Supplement or the final cost-benefit ratio determined for each of the identified SAMAs, because those SAMAs are unrelated to managing the effects of aging, the same legal conclusion would apply.

[104] Given the absence of good cause for the contentions' late filing, the State's demonstration on the other factors "must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (*quoting Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977)). Here, New York treats the other seven factors – if at all – in a cursory fashion, and fails to establish a "particularly strong" showing that the contentions should be admitted. *See* Motion at 4. Accordingly, the State has failed to satisfy the requirements of 10 C.F.R. § 2.309(c)(1).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO STATE OF NEW YORK'S MOTION FOR LEAVE TO FILE CONTENTION NYS-40," dated March 18, 2016, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 18th day of March 2016.

/Signed (electronically) by/

Sherwin E. Turk
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 415-1533
E-mail: Sherwin.Turk@nrc.gov