

December 1, 2016

NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S 58th STATUS REPORT
IN RESPONSE TO THE ATOMIC SAFETY AND
LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012

In accordance with the Atomic Safety and Licensing Board's ("Board") "Order (Granting NRC Staff's Unopposed Time Extension Motion and Directing Filing of Status Updates)" ("Order"), issued on February 16, 2012, the NRC Staff ("Staff") herewith provides its 58th monthly status report to the Board.

Safety Issues

1. Track 2 Safety Issues. Hearings on the three "Track 2" safety contentions related to the License Renewal Application ("LRA") for Indian Point Units 2 and 3 ("IP2" and "IP3") were held on November 16-19, 2015. On February 5, 2016, the State of New York ("New York") filed a motion seeking the late admission of six documents as exhibits related to the Track 2 contentions.¹ On February 19, 2019, the Board granted New York's Motion, conditioned upon its filing of expert testimony demonstrating the relevance, materiality and

¹ "State of New York Motion for Leave to File Six Documents as Additional Exhibits" (Feb. 5, 2016).

reliability of the proposed exhibits;² the Board further indicated that the evidentiary record will be closed within 10 days after the filing of all supplemental testimony, unless it requires additional testimony on the proposed exhibits.³ New York filed its supplemental testimony on March 4, 2016; Entergy and the Staff filed responsive testimony on March 18, 2016.

As required by the Board's scheduling Orders, (a) New York is to file its reply testimony regarding the six documents, and the Intervenors are to file their supplemental testimony on baffle-former bolt issues, by January 17, 2016; (b) Entergy and the Staff are to file their supplemental testimony by March 20, 2017; (c) the Intervenors are to file their reply testimony by May 1, 2017; (d) all parties are to file proposed findings of fact and conclusions of law by June 16, 2017; and (e) all parties are to file reply findings of fact and conclusions law by July 31, 2017.⁴

2. Other Safety Issues. There has been no change in this item since the Staff filed its previous status report. As stated previously, the Staff has been reviewing issues associated with two Interim Staff Guidance ("ISG") documents (LR-ISG-2012-02 and LR-ISG-2013-01).⁵ In

² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Requesting Expert Testimony on New York's Proposed Exhibits and Suspending Deadline for Filing Proposed Findings of Fact and Law)" (Feb. 19, 2016), at 2.

³ *Id.* at 3.

⁴ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Granting Unopposed Motion for Extension of Time)" (Nov. 2, 2016), at 3-4; "Order (Granting Joint Motion for Reconsideration)" (Aug. 3, 2016), at 4; "Order (Scheduling of Further Filings on Track 2 Contentions)" (July 13, 2016), at 4.

⁵ See (1) Notice of Issuance, Interim Staff Guidance; LR-ISG-2012-02; "Aging Management of Internal Surfaces, Fire Water Systems, Atmospheric Storage Tanks, and Corrosion under Insulation," 78 Fed. Reg. 70,076 (Nov. 22, 2013); (2) Notice of Issuance, Interim Staff Guidance; LR-ISG-2013-01; "Aging Management of Loss of Coating or Lining Integrity for Internal Coatings/ Linings on In-Scope Piping, Piping Components, Heat Exchangers, and Tanks," 79 Fed. Reg. 68,308 (Nov. 14, 2014).

addition, a further ISG (LR ISG-2015-01) has been issued,⁶ and an additional draft ISG (LR ISG-2016-01) has been issued for public comment.⁷ The Staff has not yet determined whether these matters will be addressed in an SER Supplement for IP2 and IP3. The Staff will provide further information to the Board regarding these issues when available.

Environmental Issues

3. FSEIS Supplement. On December 22, 2015, the Staff issued its draft second supplement (Volume 5) to the Final Supplemental Environmental Impact Statement ("FSEIS") for license renewal of IP2 and IP3.⁸ Numerous public comments were submitted regarding the draft FSEIS supplement, and those comments continue to be reviewed by the Staff at this time. Accordingly, the Staff has determined that the issuance of Final Supplement 2 (Volume 5) to the FSEIS will be delayed. The Staff will provide further information to the Board regarding the expected issuance date, when available.⁹

4. Contention NYS-12C (SAMAs). There has been no change in this item since the Staff filed its previous status report. As stated previously, on February 14, 2014, New York filed a petition for review of the Board's Partial Initial Decision (LBP-13-13) concerning Contention

⁶ See Notice of Issuance, Interim Staff Guidance; LR-ISG-2015-01, "Changes to Buried and Underground Piping and Tank Recommendations," 81 Fed. Reg. 23 (Feb. 4, 2016). This LR-ISG will replace aging management program (AMP) XI.M41, "Buried and Underground Piping and Tanks," and the associated Updated Final Safety Analysis Report (UFSAR) Summary Description in LR-ISG-2011-03, "Changes to the Generic Aging Lessons Learned (GALL) Report Revision 2 Aging Management Program (AMP) XI.M41, 'Buried and Underground Piping and Tanks.'"

⁷ Draft License Renewal Interim Staff Guidance [LR ISG-2016-01]; Request for Comment, "Changes to Aging Management Guidance for Various Steam Generator Components," 81 Fed. Reg. 36,612 (June 7, 2016).

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, Vol. 5 (Dec. 2015) ("Draft FSEIS Supplement 2"). See Letter from Sherwin E. Turk to the Board (Dec. 22, 2015), at 1.

⁹ The Staff previously stated that it expected to issue Final FSEIS Supplement 2 in January 2017. See NRC Staff's 57th Status Report (Nov. 1, 2016) at 3.

NYS-12C,¹⁰ and on April 28, 2014, New York filed a petition for review of the Board's Order denying its motion to reopen and reconsider that portion of the decision.¹¹ On May 4, 2016, the Commission issued CLI-16-07, in which it reversed the Board's decision on Contention NYS-12, directed the Staff to perform additional sensitivity analyses due to uncertainties in the CDNFRM and TIMDEC input values and denied New York's other petition for review.¹² On September 12, 2016, the Staff has issued requests for additional information ("RAIs") to Entergy regarding the required sensitivity analyses; Entergy's answers are due by January 10, 2017.¹³ The Staff may present its evaluation of the sensitivity analyses in a further FSEIS supplement, if warranted. The Staff will provide additional information to the Board regarding this matter when available.

5. Coastal Zone Management Act ("CZMA") Issues. To the best of the Staff's knowledge, information and belief, the current status of CZMA-related issues is as follows.

(a) *Previous State Reviews.* On June 12, 2013, the Board denied the Applicant's and New York's motions seeking the entry of a declaratory order regarding Entergy's claim that New York had previously conducted a review of IP2/IP3 for consistency with the New York State Coastal Management Program ("CMP"), and that no further review is required under the CZMA.¹⁴ The Board left open the possibility that the motions might be re-filed following consultations between the Staff and New York pursuant to 15 C.F.R. § 930.51(e). The Staff

¹⁰ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC 246 (Nov. 27, 2013).

¹¹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)" (Apr. 1, 2014).

¹² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-16-7, 83 NRC 293 (2016).

¹³ See Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy) (Sept. 12, 2016) (ADAMS Accession No. ML16232A119).

¹⁴ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013).

subsequently engaged in consultations with the New York State Department of State (“NYSDOS”) and the Applicant through December 2014. Entergy has indicated that it may still seek a declaratory order that no consistency review of IP2/IP3 is required, on the basis of New York’s previous consistency reviews.¹⁵

(b) 2012 Consistency Certification. On December 17, 2012, Entergy filed a certification with NYSDOS, asserting that license renewal of IP2/IP3 is consistent with the New York CMP; on November 5, 2014, Entergy submitted a letter to NYSDOS, stating that it was withdrawing its consistency determination, subject to resubmittal following issuance of the Staff’s Final FSEIS Supplement.¹⁶ On November 21, 2014, NYSDOS stated that Entergy’s withdrawal of its consistency certification was not effective;¹⁷ Entergy has disputed that conclusion. On November 6, 2015, NYSDOS issued its consistency determination, finding that license renewal of Indian Point Units 2 and 3 is not consistent with the New York CMP;¹⁸ that determination may be appealed to the U.S. Secretary of Commerce.¹⁹

On November 25, 2015, the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”) extended the time for Entergy to appeal from NYSDOS’s consistency determination until 60 days after issuance of the New York Court of Appeals’ final order on New York’s appeal from the Appellate Division’s grandfathering decision; NOAA also

¹⁵ Letter from Kathryn M. Sutton, Esq. and Paul M. Bessette, Esq., to the Board (Dec. 1, 2016), at 2.

¹⁶ See Letter from John Sipos to the Board (Nov. 6, 2014), attaching letter from Fred Dacimo (Entergy) to NRC Document Control Desk and Linda M. Baldwin, Esq. (NYSDOS), NL 14 140 (“Withdrawal of December 17, 2012 Coastal Zone Management Act Consistency Certification”) (Nov. 5, 2014) (ADAMS Accession No. ML14310A346).

¹⁷ Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to Fred Dacimo (Entergy) (Nov. 21, 2014) (ADAMS Accession No. ML14328A474).

¹⁸ Letter from Cesar A. Perales (Secretary of State, NYSDOS), to Fred Dacimo (Entergy) (Nov. 6, 2015).

¹⁹ Letter from Kathryn M. Sutton, Esq. and Paul M. Bessette, Esq., to the Board (Dec. 1, 2016), at 2. See 16 U.S.C. §1456(c)(1)(C)(3).

requested that Entergy and New York file a joint status report 30 days prior to that deadline, describing their position on the necessity (if any) for further action by NOAA on this matter.²⁰

Entergy has indicated it may appeal NYSDOS's consistency determination to the U.S. Secretary of Commerce.²¹ In addition, Entergy has challenged NYSDOS's consistency determination as barred by the federal preemption doctrine, in a suit filed before the U.S. District Court for the Northern District of New York.²²

(c) *Grandfathering*. On December 11, 2014, the State of New York Supreme Court, Appellate Division, Third Judicial Department, held that Indian Point Units 2 and 3 were "grandfathered" under New York's CMP and are therefore exempt from a CMP consistency review.²³ On November 21, 2016, the New York Court of Appeals reversed the Appellate Division's decision, holding that NYSDOS's interpretation of the CMP and its conclusion that Entergy's license renewal application for IP2 and IP3 is subject to a CMP consistency review "are rational, and must be sustained."²⁴

²⁰ Letter from Lois Schiffer (General Counsel, NOAA) to Sanford I. Weisburst, Esq. and Linda Baldwin, Esq. (Nov. 25, 2015).

²¹ Letter from Kathryn M. Sutton, Esq. and Paul M. Bessette, Esq., to the Board (Dec. 1, 2016), at 2.

²² *Id.*; *Entergy Nuclear Indian Point 2, LLC, et al. v. Perales*, Case 1:16 cv 00051-LEK DJS (N.D.N.Y., complaint filed Jan. 14, 2016).

²³ *Entergy Nuclear Operation, Inc. v. New York State Department of State*, 518510, 999 N.Y.S.2d 207, 2014 N.Y. App. Div. LEXIS 8686; 2014 NY Slip Op 08702 (App. Div. 3d Dep't, Dec. 11, 2014), *rev'g* 42 Misc. 3d 896, 976 N.Y.S.2d 650 (Sup. Ct. 2013).

²⁴ *Entergy Nuclear Operation, Inc. v. New York State Department of State*, No. 179, 2016 N.Y. LEXIS 3536; 2016 NY Slip Op 07821 (Nov. 21, 2016), slip op. at 16.

6. Other Matters. The Staff is not currently aware of any other matter that has the potential to impact the schedule for hearings in this proceeding. In accordance with the Board's direction (Order, at 2), the Staff will notify the Board as soon as any other event with potential to alter the hearing schedule arises.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 1st day of December 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247/286-LR
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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S 58th STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated December 1, 2016, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 1st day of December, 2016.

/Signed (electronically) by/

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