

March 1, 2017

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 61<sup>st</sup> 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 61<sup>st</sup> monthly status report to the Board.

A. Settlement Agreement and Withdrawal of Pending Contentions

On January 11, 2017, Counsel for Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") submitted a letter to the Board, stating that Entergy had entered into a settlement agreement ("Settlement Agreement") with the Attorney General of the State of New York ("New York"), other New York governmental entities, and Riverkeeper, Inc., regarding the continued operation of Indian Point Units 2 and 3 ("IP2" and "IP3").<sup>1</sup> Entergy provided certain information regarding the Settlement Agreement and requested, on behalf of itself, New York and Riverkeeper, that the Board schedule a conference call to discuss the agreement and the immediate deferral of near-term filing deadlines in this proceeding.

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<sup>1</sup> Letter from Paul M. Bessette, Esq. to the Board (Jan. 11, 2017) ("Joint Request for Conference Call to Discuss the Parties' Recent Settlement Agreement and Need for Immediate Deferral of Near-Term Filing Deadlines").

On January 12, 2017, the Board issued an Order in which it, *inter alia*, held further filings in abeyance, and requested further information regarding the Settlement Agreement.<sup>2</sup> On January 18, 2017, the Board held a telephone conference call with the parties, during which it directed the parties to address certain matters in their filings concerning the Intervenor's withdrawal of their contentions, and suspended the parties' obligations to continue mandatory disclosure and hearing file submissions, pending further order by the Board.<sup>3</sup>

On February 8, 2017, (a) Entergy filed an amendment to its license renewal application ("LRA") seeking to shorten the requested license renewal term for IP2 and IP3 to April 30, 2024 and April 30, 2025, respectively;<sup>4</sup> and (b) New York and Riverkeeper filed an unopposed motion to withdraw their three pending contentions and to dismiss those contentions, and this proceeding, in its entirety.<sup>5</sup> Separately, Entergy, New York and Riverkeeper have taken steps to dismiss other litigation regarding IP2/IP3 license renewal, including litigation concerning the Coastal Zone Management Act ("CZMA") and various water-related permits and approvals.<sup>6</sup> On February 21, 2017, Entergy and the Staff filed their answers to the Intervenor's motion to

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<sup>2</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Holding Further Filings in Abeyance and Requesting Availability for Telephone Status Conference)" (Jan. 12, 2017).

<sup>3</sup> See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Official Transcript of Proceedings" (Jan. 18, 2017), Tr. at 5,932-35, 5,936.

<sup>4</sup> See (1) Letter from Anthony J. Vitale (Entergy) to NRC Document Control Desk, NL-17-019, "Amendment to License Renewal Application – Reflecting Shortened License Renewal Terms for Units 2 and 3" (Feb. 8, 2017) (Agency Documents Access and Management System ("ADAMS") Accession No. ML17044A005); and (2) Letter from Anthony J. Vitale (Entergy) to NRC Document Control Desk, NL-17-021, "Notification of Permanent Cessation of Power Operations" (Feb. 8, 2017) (ADAMS Accession No. ML17044A004).

<sup>5</sup> See "Intervenor's Notice of Withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding in Its Entirety" ("Notice") (Feb. 8, 2017).

<sup>6</sup> See Tr. at 5,902, 5,904, 5,907, and 5,919.

dismiss.<sup>7</sup> No other answers or comments were submitted regarding the Intervenor's Notice.<sup>8</sup>

B. Current Litigation and Staff Reviews

Safety Issues

1. Track 2 Safety Issues. Hearings on the three "Track 2" safety contentions related to the LRA for IP2 and IP3 were held on November 16-19, 2015. On February 5, 2016, New York filed a motion seeking the late admission of six documents as exhibits related to the Track 2 contentions.<sup>9</sup> On February 19, 2016, the Board granted New York's Motion, conditioned upon its filing of expert testimony demonstrating the relevance, materiality and reliability of the proposed exhibits;<sup>10</sup> 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.<sup>11</sup> New York filed its supplemental testimony on March 4, 2016; Entergy and the Staff filed responsive testimony on March 18, 2016. Under the schedule in effect prior to the Board's recent suspension of further filings, (a) New York was due to file its reply testimony regarding the six documents, and the Intervenor's were to file their supplemental testimony on baffle-former bolt issues, by January 17, 2017; (b) Entergy and the

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<sup>7</sup> See (1) "NRC Staff's Answer to Intervenor's Notice of withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding in Its Entirety" (Feb. 21, 2017); and (2) "Entergy's Answer in Support of Intervenor's Motion to Dismiss the Pending Track 2 Contentions and Terminate the Proceeding" (Feb. 21, 2017).

<sup>8</sup> On February 15, 2017, the Board provided an opportunity for interested governmental entities (i.e., the Town of Cortlandt, Westchester County, the State of Connecticut, the NYC Department of Environmental Protection, and the Village of Buchanan) to comment on the Intervenor's notice and motion. See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Notice (Opportunity for Comment on Motion to Withdraw)" (Feb. 15, 2017). No comments have been submitted by those entities.

<sup>9</sup> "State of New York Motion for Leave to File Six Documents as Additional Exhibits" (Feb. 5, 2016).

<sup>10</sup> *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.

<sup>11</sup> *Id.* at 3.

Staff were to file their supplemental testimony by March 20, 2017; (c) the Intervenors were to file their reply testimony by May 1, 2017; (d) all parties were to file proposed findings of fact and conclusions of law by June 16, 2017; and (e) all parties were to file reply findings of fact and conclusions law by July 31, 2017.<sup>12</sup>

2. Other Safety Issues. 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).<sup>13</sup> In addition, two other ISGs have been issued: (a) LR ISG-2015-01,<sup>14</sup> and (b) LR ISG-2016-01.<sup>15</sup> The Staff expects to address these matters in an SER Supplement related to IP2/IP3 license renewal. The Staff will provide further information regarding these issues when available.

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<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> 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.'"

<sup>15</sup> See Notice of Issuance, Interim Staff Guidance; LR-ISG-2016-01, "Changes to Aging Management Guidance for Various Steam Generator Components," 81 Fed. Reg. 88,276 (Dec.7, 2016). This LR-ISG describes changes to aging management program (AMP) XI.M19, "Steam Generators," and aging management review (AMR) items for steam generator components in the GALL Report, Rev. 2, and NUREG-1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (SRP-LR), Rev. 2.

Environmental Issues

3. FSEIS Supplement. There has been no change in this item since the Staff filed its previous status report. 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.<sup>16</sup> Numerous public comments were submitted regarding the draft FSEIS supplement, which the Staff is continuing to review. 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 regarding the expected issuance date, when available.<sup>17</sup>

4. Contention NYS-12C (SAMAs). 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 NYS-12C,<sup>18</sup> 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.<sup>19</sup> 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

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<sup>16</sup> "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.

<sup>17</sup> The Staff previously stated that it expected to issue Final FSEIS Supplement 2 in January 2017. See NRC Staff's 57<sup>th</sup> Status Report (Nov. 1, 2016) at 3.

<sup>18</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC 246 (Nov. 27, 2013).

<sup>19</sup> *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).

for review.<sup>20</sup> On September 12, 2016, the Staff issued requests for additional information (“RAIs”) to Entergy regarding the required sensitivity analyses, to which Entergy responded on February 1, 2017.<sup>21</sup> The Staff may present its evaluation of the sensitivity analyses in a further FSEIS supplement, if warranted. The Staff will provide additional information regarding this matter when available.

5. CZMA Issues. On January 24, 2017, Entergy informed the Board, *inter alia*, that NYSDOS had withdrawn its challenge to Entergy’s November 5, 2014 withdrawal of its consistency certification, that Entergy will submit a new CZMA certification, and that “there is no need at this time for Entergy to pursue arguments regarding previous [CZMA consistency] review or for the Staff, State, and NRC to engage in further consultations on previous review.”<sup>22</sup> On January 31, 2017, Entergy submitted a new CZMA consistency certification for NYSDOS review;<sup>23</sup> public comments on Entergy’s consistency certification are to be submitted to NYSDOS by March 2, 2017.

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<sup>20</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-16-7, 83 NRC 293 (2016).

<sup>21</sup> See (1) Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy) (Sept. 12, 2016) (ADAMS Accession No. ML16232A119); Letter from Anthony J. Vitale (Entergy) to NRC Document Control Desk, NL-17-002 (Feb. 1, 2017) (ADAMS Accession No. ML17040A433).

<sup>22</sup> Letter from Anthony J. Vitale (Entergy) to NRC Document Control Desk, NL-17-015 (Jan.24, 2017) (ADAMS Accession No. ML17030A037).

<sup>23</sup> Letter from Fred Dacimo (Entergy) to Office of Planning and Development, Consistency Review Unit (NYSDOS), NL-17-018 (Jan.31, 2017) (ADAMS Accession No. ML17060A614).

6. Other Matters. Apart from the matters described herein, 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 1<sup>st</sup> day of March 2017

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 61<sup>st</sup> STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated March 1, 2017, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 1<sup>st</sup> day of March, 2017.

**/Signed (electronically) by/**

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