

II. BACKGROUND

On November 30, 2007, New York filed a Request for Hearing and Petition to Intervene in this license renewal proceeding, challenging certain aspects of Entergy's license renewal application ("LRA") for Indian Point Nuclear Generating Units 2 and 3 ("IP2" and "IP3"). Among New York's proffered contentions is Proposed Contention 26, which alleges that Entergy's LRA does not adequately account for the effects of aging due to environmentally assisted fatigue ("EAF") on key reactor components, as required by 10 C.F.R. § 54.21. Entergy and the NRC Staff ("Staff") filed their Answers to New York's Petition on January 22, 2008.

Entergy opposed the admission of Proposed Contention 26 because it: (i) lacks sufficient specificity and basis to support its admission; (ii) lacks adequate support in the form of alleged facts or credible expert opinion; and (iii) fails to establish a genuine dispute with Entergy on a material issue of law or fact.² The Staff did not initially oppose the admission of Proposed Contention 26, "limited to the extent it challenges how the LRA demonstrates that it satisfies the elements of [10 C.F.R. § 54.21(c)(iii) for the CUF [cumulative usage factor]." Thus, the Staff opposed Contention 26 insofar as it suggests that Entergy will use arbitrary assumptions in performing any refined analyses of the CUFs. In addition, the Staff opposed New York's request that Entergy immediately replace components with CUFs exceeding 1.0, as that issue relates to current plant operation, not to license renewal, contrary to 10 C.F.R. § 54.30.³

On the same day that Entergy responded to New York's Petition, it filed Amendment No. 2 to the LRA ("LRA Amendment 2").⁴ As Entergy explained, LRA Amendment 2 clarifies the relationship between License Renewal Commitment 33 regarding EAF and the Fatigue

² See 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi).

³ See NRC Staff's Response to Petition[] to Intervene of [the State of New York] (Jan. 22, 2008) at 77-78.

⁴ See Letter from Fred R. Dacimo, Vice President, Entergy, to U.S. Nuclear Regulatory Commission, Document Control Desk, (Jan. 22, 2008) (Entergy Letter NL-08-021), available at ADAMS Accession No. ML080290659.

Monitoring Program described in Section B.1.12 of Appendix B to the LRA. New York filed its Reply to Entergy's Answer on February 15, 2008, asserting that LRA Amendment 2 did not resolve the concerns raised in Contention 26. On March 4, 2008, the NRC Staff—concluding that the amendment resolved its remaining concern with New York Contention 26—filed a letter apprising the Board that the LRA omissions alleged in Riverkeeper Contention TC-1 and New York Contention 26 had been cured by LRA Amendment 2, and that the Staff now considers those contentions moot and inadmissible.⁵

On March 6, New York and Riverkeeper filed a joint motion seeking to strike that portion of the Staff's March 4 letter discussing the change in the Staff's view concerning the admissibility of Riverkeeper TC-1 and New York Contention 26.⁶ New York, unlike

Riverkeeper, did not seek to amend its proposed metal fatigue contention at that juncture.⁷

During the March 11, 2008, oral argument on contention admissibility, the Board asked counsel for New York to notify the Board in writing whether New York intended to file an amended contention in response to LRA No. 2.⁸ By letter dated March 17, 2008, New York notified the Board that it intended to file a revised contention by April 7, 2008. New York filed NYS 26-A on that date. Pursuant to the Board's Orders of March 18 and April 9, 2008,⁹ Entergy hereby files its Answer to New York's request for admission of NYS 26-A.

⁵ See Letter from David E. Roth and Kimberly A. Sexton, Counsel for NRC Staff, to Atomic Safety and Licensing Board (Mar. 4, 2008) ("NRC Staff March 4 Letter").

⁶ See Joint Motion to Strike Paragraph One of Staff's "Pleading" Letter Dated March 4, 2008 (Mar. 6, 2008).

⁷ Riverkeeper filed a request to amend TC-1 on March 5, 2008. See Riverkeeper, Inc.'s Request for Admission of Amended Contention [TC-1] (Mar. 5, 2008). Entergy filed an Answer opposing admission of Amended TC-1 on March 31, 2008. See Answer of Entergy Nuclear Operations, Inc. to Riverkeeper's Request for Admission of Contention TC-1 (Concerning Environmentally Assisted Metal Fatigue) (Mar. 31, 2008).

⁸ Transcript of Oral Argument on Admissibility of Proposed Contentions ("Tr.") at 417-19 (Mar. 11, 2008).

⁹ Licensing Board Order (Scheduling Briefing Regarding the Effect of License Amendment 2 on Pending Contentions) (Mar. 18, 2008) at 2; Licensing Board Order (Granting Riverkeeper, Inc.'s Motion and Amending Briefing Schedule) (Apr. 9, 2008) at 2.

III. ARGUMENT

Under the unique circumstances present here, Entergy does not oppose proposed NYS 26-A as nontimely, even though New York filed the supplemental contention approximately two months after first obtaining a copy of LRA Amendment No. 2.¹⁰ Specifically, in its March 18 Order, the Board expressly permitted New York to file a supplemental contention by April 7.¹¹ Furthermore, the Board has not ruled on the admissibility of Proposed Contention 26, as originally filed by New York on November 30, 2008.¹² For the reasons explained below, however, Entergy opposes the admission of NYS 26-A because it fails to meet the contention admissibility criteria set forth in 10 C.F.R. § 2.309(f)(1). Specifically, it lacks adequate factual or legal support and fails to establish a genuine dispute with the Applicant on a material issue of law or fact.

¹⁰ Counsel for Entergy transmitted a copy of LRA Amendment 2 to the Licensing Board, NRC Staff, and all petitioners on February 4, 2008. Numerous Licensing Boards have viewed 30 days as a reasonable period for filing new or amended contentions. *See Entergy Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 266 n.11 (2007). Riverkeeper, in fact, filed its request to amend Proposed Contention TC-1 approximately 30 days after first receiving a copy of LRA Amendment 2.

¹¹ Entergy notes that its decision not to oppose Supplemental Contention 26-A as nontimely should not be construed as a waiver of the applicable provisions of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2) concerning nontimely filings and new or amended contentions. Entergy expressly reserves the right to oppose the admission of any future new or amended contentions, whether filed by New York or any other petitioner, on the basis of the contention timeliness requirements set forth in those regulations.

¹² A few unsupported points made by New York warrant clarification here. First, New York's suggestion that Entergy deliberately delayed the submittal of LRA Amendment No. 2 is spurious at best. New York accuses Entergy of having "had plenty of insider knowledge and the opportunity to incorporate this information into its original LRA." NYS 26-A Request at 2. Contrary to New York's suggestion, Entergy cited the Staff's Safety Evaluation Reports for the renewal of the ANO-1 and ANO-2 operating licenses to show that the Staff had previously approved licensee commitments similar to Commitment 33 as it *originally* appeared in the April 2007 LRA. Entergy's decision to clarify the LRA to indicate that Commitment 33 to manage fatigue will be implemented using the Fatigue Monitoring Program reflects practical insights gained from other pending license renewal proceedings. Entergy, in other words, did not act in bad faith by seeking to improve the quality of its LRA. The Board recognized this much at oral argument. *See Tr.* at 417 (Mar. 11, 2008). Second, neither the Staff nor Entergy was obligated to file a motion to dismiss Proposed Contention 26, as that contention has not even been admitted by the Board. The Staff's notification of the Board of a relevant and material development via letter was reasonable and consistent with Staff practice. *Cf.* LIC-201, "NRR Support of the Hearing Process" (Rev. 1) (Sept. 1, 2004). Finally, there is no NRC regulation or general legal tenet that precludes a litigant, including the Staff, from changing its position during a proceeding. Indeed, NRC precedent indicates otherwise. *See, e.g., Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 538 (1977) (NRC Staff position change during oral argument).

A. The Amended Contention Must Meet the Admissibility Standards of 10 C.F.R. § 2.309(f)(1)

Apart from the late-filing criteria set forth in 10 C.F.R. §§ 2.309(c) and 2.309(f)(2), a proposed new or amended contention must meet the substantive admissibility criteria set forth in 10 C.F.R. § 2.309(f)(1). Failure to comply with any one of the six admissibility criteria is grounds for the dismissal of a proposed new or amended contention.¹³ The Commission's contention admissibility rule at 10 C.F.R. § 2.309(f)(1) is "strict by design,"¹⁴ because its purpose is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."¹⁵ 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."¹⁶ In the absence of a genuine dispute on a material issue of law or fact, no hearing is warranted.

B. Contention NYS 26-A is Premised on Unfounded Factual and Legal Assertions, None of Which Supports the Admission of the Revised Proposed Contention

1. New York's assertion that certain reactor components are "already fatigue-limited" is plainly erroneous

New York first asserts that calculations previously performed by Entergy "demonstrate[] that a number of components are *already* fatigue-limited."¹⁷ This statement has no basis in fact. There are *no* components for which IPEC-specific CUFs are known to *currently* exceed 1.0. Nor is Entergy, contrary to New York's suggestion, seeking to "expunge the record" of its prior

¹³ See Final Rule, "Changes to the Adjudicatory Process," 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); see also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

¹⁴ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *recons. denied*, CLI-02-1, 55 NRC 1 (2002).

¹⁵ 69 Fed. Reg. at 2202.

¹⁶ *Id.*

¹⁷ NYS 26-A Request at 5 (emphasis supplied).

calculations.¹⁸ New York's statements, in fact, bespeak a fundamental lack of understanding of the issue at hand—*i.e.*, EAF and how it is addressed in the context of a license renewal application.

Section 4.3.3 of the LRA includes a “screening” analysis based on conservatively determined EAF correction factors (F_{en}) applied to the results of existing fatigue analyses, to determine whether those analyses can be satisfactorily projected to the end of the period of extended operation in accordance with 10 C.F.R. § 54.21(c)(ii).¹⁹ The results of this screening analysis are shown for the components in LRA Table 4.3.13 and Table 4.3.14 with calculated EAF-adjusted CUFs as *projected* to the end of the period of extended operation; *not* CUFs based on operation up to the time of LRA preparation.²⁰

Recognizing that certain environmentally-adjusted CUFs contained in LRA Tables 4.3-13 and 4.3-14 have not been shown acceptable at the end of the period of extended operation, New York assumes such components are “already fatigue-limited.”²¹ The LRA makes clear that this is an erroneous assumption:

Due to the factor of safety included in the ASME code, a CUF of greater than 1.0 does *not* indicate that fatigue cracking is expected; rather, it indicates that there is a higher *potential* for fatigue cracking at locations having CUFs exceeding 1.0. Tables 4.3-13 and 4.3-14 do not indicate that 40 year CUFs will exceed 1.0 because the EAF adjustment is not applied during the initial 40 years of operation. However, some of the CUFs will exceed 1.0 *at the beginning of the period of extended operation* when the EAF adjustment is added to the CUF calculation.²²

¹⁸ *Id.*

¹⁹ See LRA at 4.3-20 to 4.3-25.

²⁰ See *id.* at 4.3-24 to 4.3-25.

²¹ NYS 26-A Request at 5.

²² LRA at 4.3-22 (emphasis supplied).

New York provides no information to suggest otherwise. There is, quite plainly, no factual or technical basis for asserting that certain components are “already fatigue-limited.” Moreover, because the screening calculations indicate that certain EAF-adjusted CUFs will exceed 1.0 during the period of extended operation (in other words, the fatigue analyses could not be satisfactorily projected to the end of the period of extended operation in accordance with 10 C.F.R. § 54.21(c)(ii)), Entergy has specifically committed to manage EAF under the Fatigue Monitoring Program in accordance with 10 C.F.R. § 54.21(c)(iii). Entergy’s plan to manage the effects of fatigue with the Fatigue Monitoring Program is consistent with the Commission’s direction that licensees should address the effects of coolant environment on component fatigue life *as aging management programs are formulated* in support of license renewal.²³ The notion that Entergy has “by fiat” disregarded those calculations is not supported by the record.²⁴

2. New York’s assertion that Entergy has not provided sufficient details regarding the analytical method it will use to update its existing fatigue calculations ignores the actual content of the LRA and LRA Amendment 2

New York also accuses Entergy of not providing “any details on the analytical method and analysis it proposes to use,” including information on “how its new calculational method will be benchmarked to assure its validity.”²⁵ New York and its expert, Dr. Lahey, contend that, “depending on the calculational method to be used, *e.g.*, a multidimensional FEM code, and the assumptions made, an applicant can obtain almost any answer it wishes.”²⁶ The implication is that Entergy will somehow eschew its obligation to address the potential effects of EAF by

²³ See NUREG-1800, Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (Revision 1) (Sept. 2005), § 4.3.1.2 at 4.3-2 to 4.3-3.

²⁴ NYS 26-A Request at 5.

²⁵ *Id.*; Lahey Declaration ¶ 8.

²⁶ *Id.*; Lahey Declaration ¶ 7.

engaging in mathematical legerdemain. In so asserting, New York again disregards the contents of the LRA (including Amendment 2) and demonstrates its apparent confusion on this issue.

The Fatigue Monitoring Program Description contained in LRA Section B.1.12 (see LRA Amendment 2, Attachment 1 at 5-6) contains the information New York claims is missing. It states that the analysis methods used for determination of stresses and fatigue usage will be in accordance with an NRC-endorsed edition of the American Society of Mechanical Engineers (“ASME”) Boiler and Pressure Vessel Code.²⁷ The numbers of cycles used for evaluation will be based on the design number of cycles and actual IPEC cycle counts projected out to the end of the license renewal period (60 years). Consistent with the GALL Report, Entergy will apply, to the existing fatigue analysis results, F_{en} factors derived from the formulae in NUREG/CR-6583 (carbon and low-alloy steels) and in NUREG/CR-5704 (austenitic stainless steels). Finally, all updated calculations will be governed by Entergy’s established Part 50, Appendix B, Quality Assurance program, which will “include design input verification and independent reviews ensuring that valid assumptions, transients, cycles, external loadings, analysis methods, and environmental fatigue life correction factors will be used in the fatigue analyses.”²⁸ Given these precise references and the detailed guidance contained within each reference, New York’s allegation regarding lack of any supporting detail is, once again, not founded in fact.²⁹

²⁷ Specifically, LRA Amendment 2 indicates that Entergy will adhere to ASME Boiler and Pressure Vessel Code, Section III Rules for Construction of Nuclear Power Plant Components Division 1 Subsection NB, Class 1 Components, Subarticles NB-3200 or NB-3600, as applicable to the specific component.

²⁸ LRA Amendment 2, Attachment 1 at 5-6.

²⁹ As noted above, Entergy is not using a “new calculational method” that requires “benchmarking.” NYS 26-A Request at 5; Lahey Declaration ¶¶ 7-8. Entergy’s program uses the standards set forth in Section 3 of the ASME Boiler and Pressure Vessel Code, and F_{en} equations contained in NUREG/CR-6583 NUREG/CR-5704 are industry standards derived from empirical relationships. There is no need for “benchmarking” and New York provides no explanation of what “data” would require benchmarking, or how such benchmarking would be performed. In this regard, it does not meet its burden under 10 C.F.R. § 2.309(f)(1).

In summary, LRA Amendment 2, which brings Commitment 33 within the scope of the Fatigue Monitoring Program and credits that aging management program as the basis for accepting the TLAA, complies with 10 C.F.R. § 54.21(c)(1)(iii). As the Staff noted in its March 4 letter, Entergy has “provided specific commitments to manage fatigue using the existing Fatigue Monitoring Program under 10 C.F.R. 54.21(c)(1)(iii) . . . and provided additional information regarding its calculations and quality assurance.”³⁰ New York’s unfounded allegations of vagueness fail to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

3. New York’s allegation that Entergy’s updated fatigue calculations will produce arbitrary or preordained results is baseless and underscores New York’s apparent confusion with regard to the EAF issue

New York asserts that Entergy proposes to use a “new calculational method” that will allow it to “obtain almost any answer it wishes.”³¹ Dr. Lahey states that Entergy’s commitment to perform more refined fatigue analyses “leaves too much opportunity for Entergy to reach a manipulated and predetermined result—namely, CUFs < 1.0 for the limiting components.”³² Dr. Lahey concludes that “[t]he basis for a more ‘refined analysis’ of the current calculations simply does not exist, nor has Entergy given any reason as to why the time-tested, ASME-approved standard analytical method that it previously used is no longer valid.”³³ These statements make clear the major misconceptions underpinning New York’s proposed contention and Dr. Lahey’s declaration. In short, neither New York nor Dr. Lahey appears to understand the manner in

³⁰ NRC Staff March 4 Letter at 2.

³¹ NYS 26-A Request at 5; Lahey Declaration ¶ 7.

³² Lahey Declaration ¶ 5.

³³ *Id.* ¶ 6.

which Entergy obtained the environmentally-adjusted CUFs in LRA Tables 4.3.13 and 4.3.14, or the concept of a “refined” fatigue analysis.³⁴

As noted above, Entergy obtained the environmentally-adjusted CUFs in LRA Tables 4.3.13 and 4.3.14 by determining appropriate environmental fatigue life correction factors and applying them to CUFs derived from its original fatigue calculations. These *original* calculations were performed in connection with the component design process, to evaluate and *bound* the effects of stress and fatigue using design rules contained in Section III of the ASME Boiler and Pressure Vessel Code.³⁵ End-of-life CUFs were determined in accordance with those rules. Plant equipment was analyzed using an assumed set of conservative design transients to ensure that the equipment would not exceed an allowable CUF during operation (*i.e.*, the number of cycles expected for 40 years of operation). Thus, the original fatigue calculations for IP2 and IP3 were performed using bounding, anticipated operating conditions. Because those units have been operating for more than 30 years, it is now possible to update the calculations to reflect more realistic operating conditions. When more realistic conditions are analyzed using state-of-the-art methods, it is possible to determine valid environmentally-adjusted CUFs less than 1.0. This is what is meant by a more “refined” or “rigorous” fatigue analysis.

Furthermore, contrary to New York’s assertions, Entergy is not abandoning a “time-tested” analytical method for an unproven one.³⁶ Nor is Entergy, by committing to perform updated fatigue calculations, attempting to justify a preordained result.³⁷ Entergy will perform

³⁴ Thus, Entergy reiterates its January 22 objection that Dr. Lahey, notwithstanding his execution of a declaration, has failed to provide a “reasoned basis or explanation” for his conclusion that the LRA is inadequate. Conclusory statements, even if made by alleged experts, do not provide “sufficient” support for a proposed contention. *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006).

³⁵ See LRA at 4.3-8.

³⁶ Lahey Declaration ¶ 6.

³⁷ As noted above, the Board already has rejected the notion that Entergy acted in bad faith in submitting LRA Amendment 2. See footnote 11, *supra* (citing Tr. at 417).

any re-analyses of CUFs in accordance with an NRC-endorsed edition of ASME Boiler and Pressure Vessel Code, and subject to the procedures contained in Entergy's established Part 50, Appendix B, Quality Assurance program. Pursuant to Commitment 33, if Entergy does not demonstrate valid CUFs less than 1.0 when accounting for the effects of EAF (Option 1), then it must pursue Option 2 of the commitment. Option 2 requires that Entergy repair or replace the affected locations before exceeding a CUF of 1.0, consistent with the Fatigue Monitoring Program. Entergy's commitment clearly satisfies 10 C.F.R. § 54.21(c)(1)(iii), which allows a license renewal applicant to demonstrate that "the effects of aging on the intended function(s) will be adequately managed for the period of extended operation."³⁸

4. New York's call for immediate replacement of "affected components" runs counter to 10 C.F.R. § 54.21(c)(1)(iii) and also raises an alleged current operating concern, contrary to 10 C.F.R. § 54.30

Finally, asserting that any corrective action will occur, if at all, during extended operation, and not before, New York contends that "Entergy's only prudent course of action is to replace the[] primary pressure boundary components . . . well before the onset of extended operations."³⁹ New York further states that "the most prudent way to manage aging for extended operation is to replace those affected components *now*."⁴⁰ New York assails Entergy for not proposing to take this purportedly "necessary course of action."

³⁸ 10 C.F.R. § 54.21(c)(1)(iii) (emphasis supplied). Such a docketed commitment satisfies a licensee's regulatory obligation. *See, e.g., AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188, 207 (2006). The NRC has "long declined to assume that licensees will refuse to meet their obligations," particularly given that licensees remain subject to continuing NRC oversight, inspection, and enforcement authority both before and during the renewed operating term. *Pac. Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*, CLI-03-2, 57 NRC 19, 29 (2003). For example, the NRC Staff conducts post-renewal inspections "to verify that license conditions added as part of the renewed license, license renewal commitments, selected aging management programs, and license renewal commitments revised after the renewed license was granted, are implemented in accordance with [10 C.F.R. Part 54]." *See* NRC Inspection Manual, Inspection Procedure 71003, "Post-Approval Site Inspection for License Renewal" (Feb. 15, 2008) at 1, available at NRC ADAMS Accession No. ML073530536.

³⁹ NYS 26-A Request at 5; Lahey Declaration ¶ 9.

⁴⁰ NYS 26-A Request at 6 (emphasis in original); *see also* Lahey Declaration ¶ 10.

New York' final argument is flawed and misdirected in three major respects. First, it ignores the text of Commitment 33, which requires Entergy to take action "[a]t least two years prior to the period of extended operation."⁴¹ Entergy's implementation of Commitment 33 is subject to post-renewal inspections (*see* footnote 38, *supra*).

Second, if accepted, New York's argument would rewrite 10 C.F.R. § 54.21(c)(1) by reading subparagraph (iii)—which allows an applicant to show that the effects of aging on intended functions *will be adequately managed* for the period of extended operation—out of that regulation. Part 54 anticipates that some actions taken by licensees to achieve compliance with its requirements will be future or prospective actions—and it expressly authorizes such actions.⁴² As the Commission reiterated in *Turkey Point*, "Part 54 requires renewal applicants to demonstrate how their programs *will be effective in managing the effects of aging during the proposed period of extended operation.*"⁴³ It centers license renewal reviews on the adverse effects of aging of materials, which by its very nature "becomes important principally during the period of extended operation beyond the initial 40-year license term."⁴⁴ The phenomenon of EAF is no exception.

Finally, by insisting that Entergy immediately replace components with CUFs exceeding 1.0, New York raises a *current* operating concern—albeit an invalid one for the reasons discussed above—not a license renewal issue. This is directly contrary to 10 C.F.R. § 54.30, which excludes current operating issues from the scope of license renewal. Furthermore, as the

⁴¹ LRA Amendment 2, att. 2 at 15.

⁴² *See, e.g.*, 10 C.F.R. § 54.29 (stating "actions have been identified and have been *or will be taken*" with respect to managing the effects of aging and TLAAs) (emphasis supplied).

⁴³ *Fla. Power & Light Co.* (Turkey Point Nuclear Power Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8 (2001) (internal citations and quotation marks omitted; emphasis supplied).

⁴⁴ *Id.* at 7 (quoting Final Rule, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991)).

LRA states, "the NRC believes no immediate Staff or licensee action is necessary to deal with the [EAF] issue."⁴⁵ The NRC reached this conclusion after careful evaluation in SECY-95-245 and Generic Safety Issue ("GSI") 190.⁴⁶ As the NRC explained in closing GSI-190 in 1999:

The results of the probabilistic analyses, along with the sensitivity studies performed, the iterations with industry (NEI and EPRI), and the different approaches available to the licensees to manage the effects of aging, lead to the conclusion that *no generic regulatory action is required*, and that GSI-190 is closed. This conclusion is based primarily on the negligible calculated increases in core damage frequency in going from 40 to 60-year lives. However, the calculations supporting resolution of this issue, which included consideration of environmental effects, and the nature of age-related degradation indicate the *potential* for an increase in the frequency of pipe leaks as plants continue to operate. Thus, the staff concluded that, consistent with existing requirements in 10 CFR 54.21, licensees should address the effects of coolant environment on component fatigue life *as aging management programs are formulated* in support of license renewal.⁴⁷

Therefore, New York's assertion that Entergy must immediately replace components with environmentally-adjusted CUFs exceeding 1.0 has no basis in fact or law, and, accordingly, fails to establish a genuine dispute with the Applicant on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(v)-(vi).

⁴⁵ See LRA at 4.3-21.

⁴⁶ SECY-95-245, "Completion of the Fatigue Action Plan" (Sept. 25, 1995) documents the resolution of the fatigue issue for operating nuclear power plants. The Staff addressed the fatigue issue as it pertains to license renewal in GSI-166, which was later renumbered GSI-190.

⁴⁷ See "Safety Evaluation Report Related to the License Renewal of the Monticello Nuclear Generating Plant," Docket No. 50-263, Nuclear Management Company, LLC (July 2006) at 4-28 (emphasis supplied).

IV. CONCLUSION

For the foregoing reasons, New York's Supplemental Contention 26-A does not meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) and should be rejected.

Respectfully submitted,



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Dated at Washington, DC
this 21st day of April 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	Docket Nos. 50-247-LR and 50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	ASLBP No. 07-858-03-LR-BD01
(Indian Point Nuclear Generating Units 2 and 3))	April 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of the "ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING THE STATE OF NEW YORK'S REQUEST FOR ADMISSION OF SUPPLEMENTAL CONTENTION 26-A (METAL FATIGUE)," dated April 21, 2008, were served this 21st day of April 2008 upon the persons listed below, by overnight delivery and e-mail as shown below.

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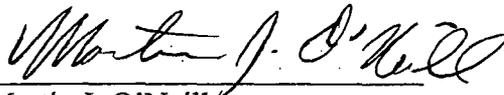
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