

April 21, 2008

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

NRC STAFF'S RESPONSE TO
NEW YORK STATE'S REQUEST FOR ADMISSION OF
SUPPLEMENTAL CONTENTION 26-A (METAL FATIGUE)

Pursuant to the Licensing Board's Order of March 18, 2008 ("Order")¹, the NRC Staff ("Staff") hereby responds to New York State's ("New York") Request for Admission of Supplemental Contention 26-A ("NY Request"), concerning the issue of metal fatigue.² For the reasons set forth below, the Staff opposes the admission of New York Supplemental Contention 26-A.

BACKGROUND

On January 22, 2008, Entergy submitted to the U.S. Nuclear Regulatory Commission ("NRC") its Amendment 2 to Entergy's License Renewal Application ("LRA Amendment 2") for Indian Point Units 2 and 3.³ This submitted Amendment directly affected New York Contention 26, the admission of which the Staff had not opposed in its response to contentions

¹ "Order (Scheduling Briefing Regarding the Effect of License Amendment 2 on Pending Contentions)," dated March 18, 2008, at 2.

² See "Petitioner State of New York's Request for Admission of Supplemental Contention No. 26-A (Metal Fatigue)," dated April 7, 2008; Declaration of Dr. Richard T. Lahey, Jr., in Support of the State of New York's Supplemental Contention 26-A," dated April 7, 2008.

³ Entergy Letter NL-08-021, from Fred R. Dacimo, Vice President, License Renewal, to NRC Docket Control Desk, dated January 22, 2008.

filed on January 22, 2008.⁴ On March 4, 2008, after receiving Entergy's LRA Amendment, Counsel for the Staff sent a letter⁵ to the Licensing Board, stating the Staff's view that New York Contention 26 was moot, and that the Staff now opposes admission of that contention. The Licensing Board directed further filing on the issue, and New York timely filed its revised contention (Supplemental Contention 26-A) pursuant to the Board's Order. The Staff herein responds to New York Supplemental Contention 26-A.

DISCUSSION

I. Contention Admissibility

The legal requirements governing the admissibility of contentions are well established, and currently are set forth in 10 C.F.R. § 2.309(f). The Staff has previously addressed these requirements in its response to the Petitioners' contentions (Staff Response to Petitions, at 15-25), and incorporates that discussion by reference herein. In brief, in order to be admitted, a contention must satisfy the following requirements:

(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;

⁴ "NRC Staff's Response to Petitions for Leave to Intervene Filed by (1) Connecticut Attorney General Richard Blumenthal, (2) Connecticut Residents Opposed to Relicensing of Indian Point, and Nancy Burton, (3) Hudson River Sloop Clearwater, Inc., (4) The State of New York, (5) Riverkeeper, Inc., (6) the Town of Cortlandt, and (7) Westchester County" ("Staff Response to Petitions"), dated January 22, 2008, at 77-78.

⁵ Letter from David E. Roth and Kimberly A. Sexton, Counsel for the NRC Staff, to the Licensing Board, dated March 4, 2008.

(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;

(vi) In a proceeding other than one under 10 CFR 52.103, 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)(i) – (vii). Further, to be admitted, contentions must satisfy the criteria in

10 C.F.R. § 2.309(f)(2). That regulation provides as follows:

(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 add new contentions 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 from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or 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) The information upon which the amended or new contention is based on materially different than information previously available; and

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

10 C.F.R. § 2.309(f)(2).⁶

II. Supplemental Contention 26-A

New York states that it does not withdraw its original contention 26, but instead seeks to supplement the bases for that contention. NY Request at 2. New York does not repeat its original contention, but instead proffers the following:

LRA Amendment #2 does not change the basic premise of New York's Contention 26: that Entergy has not submitted an adequate aging plan for metal fatigue, as it is required to do pursuant to 50 [sic] C.F.R. § 54.21(c)(1)(iii)[⁷].

Id. at 4.

In support of Contention 26-A, New York states that the LRA's approach is reasonable in principle, but is not reasonable here. *Id.* at 5. New York states that the application omits details on analytical methods and analyses it proposes to use and fails to indicate how its "new calculational method will be benchmarked," and it asserts that this vagueness is unacceptable. *Id.* New York alleges that having the calculations done at some unknown point following approval of the application fails to meet 10 C.F.R. § 54.21(c)(1)(iii). *Id.* According to New York, the Applicant must now replace a variety of pressure boundary components. *Id.* at 5-6. New

⁶ New York filed Contention 26-A in accordance with the schedule established by the Licensing Board, and appears to satisfy the timeliness requirements of 10 C.F.R. § 2.309(f)(2)(i)-(iii).

⁷ Pursuant to 10 C.F.R. § 54.21(c)(1)(iii), an application must, demonstrate that, for time-limited aging analyses, "The effects of aging on the intended function(s) will be adequately managed for the period of extended operation."

York states that the corrective action is vague because any corrective action will occur during the period of extended operation rather than prior to the period of extended operation. *Id.* at 6.

III. Staff Response

A. Details Are Not Required Because a Commitment is Acceptable

New York mistaken when it alleges that calculational methods and details must be provided with the application, and the time for re-analysis is unknown, and that without those details, 10 C.F.R. § 54.21(c)(1)(iii) is unsatisfied. See NY Request at 5. As discussed below, the approach is consistent with the regulations and staff guidance.

1. Rulemaking Background on Commitments

In promulgating the license renewal rules in 1991, the Commission clearly and directly addressed and accepted the use new commitments to monitor, manage, and *correct* age-related degradation unique to license renewal. 56 Fed. Reg. 64943 ("Nuclear Power Plant License Renewal"). On this topic, the Commission stated that the most fundamental issue about license renewal rulemaking was what standards and scope of review should apply to license renewal decisions. *Id.* The Commission's went on to say that new commitments were an acceptable licensing basis:

(4) The licensing basis for a nuclear power plant during the renewal term will consist of the current licensing basis and new commitments to monitor, manage, and correct age-related degradation unique to license renewal, as appropriate. The current licensing basis includes all applicable NRC requirements and licensee commitments, as defined in the rule.

Id. at 64945 - 64946.

In revisiting the License Renewal Rules in 1995, the Commission again stated that it will consider commitments:

In addition, the Commission concludes that, for the licensee renewal review, consideration of written commitments only need encompass those commitments that concern the capability of

systems, structures, and components, identified in §54.21(a), integrated plant assessment and §54.21(c) time-limited aging analyses, to perform their intended functions, as delineated in § 54.4(b).

60 Fed. Reg. 22461, 22473 ("Nuclear Power Plant License Renewal; Revisions").

2. Staff Guidance on Commitments

As discussed below, the Staff provides example guidance in its SRP-LR⁸ that clearly and unambiguously shows that commitments are an acceptable method to meet the license renewal requirements. Further, it shows that the applicant may commit to performing actions *in the future* to show that the effects of aging will be managed.

Specifically, the SRP-LR gives the following example for an acceptable implementation schedule for an applicant to perform a Metal Fatigue TLAA Evaluation for 10 CFR

54.21(c)(1)(iii):

An applicant need not incorporate the implementation schedule into its FSAR. However, the reviewer should verify that the applicant has identified and committed in the license renewal application to *any future aging* management activities to be completed before the period of extended operation. The staff expects to impose a license condition on any renewed license to ensure that the applicant will complete these activities no later than the committed date.

⁸ NUREG-1800, Rev. 1, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" ("SRP-LR"). The SRP-LR describes its purpose thusly:

The Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants (SRP-LR) provides guidance to Nuclear Regulatory Commission (NRC) staff reviewers in the Office of Nuclear Reactor Regulation (NRR). These reviewers perform safety reviews of applications to renew nuclear power plant licenses in accordance with Title 10 of the Code of Federal Regulations (CFR) Part 54. The principal purposes of the SRP-LR are to ensure the quality and uniformity of staff reviews and to present a well-defined base from which to evaluate applicant programs and activities for the period of extended operation. The SRP-LR is also intended to make information about regulatory matters widely available, to enhance communication with interested members of the public and the nuclear power industry, and to improve their understanding of the staff review process.

SRP-LR at 4.3-10 ("Table 4.3-2. Example of FSAR Supplement for Metal Fatigue TLAA Evaluation") (emphasis added). In sum, an applicant may use new commitments for future aging management activities for metal fatigue. *Id.* Further, the Staff clearly accepts commitments to meet the requirements of 10 C.F.R. 54.21(c)(1)(iii). *Id.*

An application may include a commitment to implement an aging management program prior to the period of extended operation; it may not be necessary to execute the proposed program (in this case by recalculating pursuant to the fatigue monitoring program) prior to applying a renewed license in order to satisfy 10 C.F.R. § 54.21(c)(1)(iii). The regulation states that the application must demonstrate that the effects of aging will be (as opposed to currently are) adequately managed for the period of extended operation. *Id.* Therefore, logically, the Applicant may make a commitment to implement a proposed program at a future date and still satisfy 10 C.F.R. § 54.21(c)(1)(iii).

3. Calculation Commitments for Indian Point

The above discussion is applicable to New York's concerns with the Indian Point LRA, and shows that New York has not identified an omission from the application. In this case, the Applicant's Commitment 33, which is to perform certain corrective actions prior to the period of extended operation, is sufficient for the contents of an application. New York amended contention 26-A has failed to meet the requirements of 10 C.F.R. 2.309(f)(1)(vi) in that it has failed to demonstrate that the application failed to contain required information.

In this specific case, the commitment is to perform the refined analyses at least two years prior to the period of extended operation. Amendment 2 at 15. Contrary to New York's assertion, the date is not unknown (see NY Request at 5), but is fixed as at least two years prior to the period of extended operation. *Id.* As described in the SRP-LR, discussed above, this commitment appears to satisfy the Commission's requirements for an application in that it would

match the Staff's anticipated license condition provided to ensure that the Applicant will complete these activities no later than two years prior to the period of extended operations. See SRP-LR at 4.3-10.

4. New York Has Misunderstood the Applicant's Commitment

New York has fundamentally misunderstood LRA Amendment 2, in terms of how refined calculations will be done. New York's concerns over benchmarking a "new" calculational method ignore the plain language of the LRA, which states that analyses using an NRC-approved version of the ASME code⁹ or NRC-approved alternative (e.g., NRC-approved code case) may be performed to determine a valid CUF. LRA Amendment 2 at 15. Contrary to New York's assertion (Request at 5), the LRA Amendment does not say that a new method will be developed.

B. New York's Argument on Reasonableness is Unsupported

New York fails to support its argument that the approach in the application is unreasonable. See NY Request at 5 (*citing* Lahey Decl. at ¶ 6). New York's claim that the proposal to use refined analysis "raises more questions than answers" (NY Request at 4) is unsupported by any regulation or guidance document. See *Id.* at 4-5. Contrary to New York's concern over this approach, the approach is acceptable to meet the regulation and Staff guidance, as described below.

NUREG-1801, Rev. 1 ("Generic Aging Lessons Learned (GALL) Report)" provides important guidance concerning the preparation and review of license renewal applications. As indicated therein, the Staff's evaluation of the adequacy of each generic aging management program in managing certain aging effects for particular structures and components is based on

⁹ New York's supporting Declaration of Dr. Lahey, Jr., shows that using an ASME approved code is important to the declarant. Declaration of Dr. Richard T. Lahey, Jr., in support of the State of New York's Supplemental Contention 26-A, at 3.

its review of the following 10 program elements in each aging management program. GALL Report at 2.¹⁰ Those 10 elements are: Scope of the Program; Preventative Actions; Parameters Monitored or Inspected; Detection of Aging Effects; Monitoring and Trending; Acceptance Criteria; Corrective Actions; Confirmation Process; Administrative Controls; and Operating Experience. *Id.* at 2-3. Acceptance criteria determine the need for corrective action. *Id.* at 3. Corrective actions are done in response to an identified problem; until a problem has been identified, there is no need to take corrective action.

In the context of metal fatigue, the NRC provided the following discussion of corrective actions: An acceptable AMP for metal fatigue will be one that:

[p]rovides for corrective actions to prevent the usage factor from exceeding the design code limit during the period of extended operation. Acceptable corrective actions include repair of the component, replacement of the component, and a more rigorous analysis of the component to demonstrate that the design code limit will not be exceeded during the extended period of operation. For programs that monitor a sample of high fatigue usage locations, corrective actions include a review of additional affected reactor coolant pressure boundary locations. As discussed in the

¹⁰ As stated in NUREG-1801, at iii:

The Generic Aging Lessons Learned (GALL) report contains the staff's generic evaluation of the existing plant programs and documents the technical basis for determining where existing programs are adequate without modification and where existing programs should be augmented for the extended period of operation. The evaluation results documented in the GALL report indicate that many of the existing programs are adequate to manage the aging effects for particular structures or components for license renewal without change. The GALL report also contains recommendations on specific areas for which existing programs should be augmented for license renewal. An applicant may reference the GALL report in a license renewal application to demonstrate that the programs at the applicant's facility correspond to those reviewed and approved in the GALL report and that no further staff review is required. The focus of the staff review is on the augmented existing programs for license renewal. The incorporation of the GALL report information into the NUREG-1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants," as directed by the Commission, should improve the efficiency of the license renewal process.

appendix to this report, the staff finds the requirements of 10 CFR Part 50, Appendix B, acceptable to address the corrective actions.

NUREG-1801 at X M-1 - X M-2 (Describing the elements of an acceptable AMP for Metal Fatigue Of Reactor Coolant Pressure Boundary) (emphasis added).

In other words, the proposed re-analyses are treated no differently than repair or replacement.¹¹ An acceptable license renewal application does have to describe how an applicant has already performed a re-analysis, just as it does not have to describe how an applicant has already repaired or replaced a component. Given a component that will not meet its acceptance criteria during the period of extended operation, the program described in the application may freely provide for re-analysis, then, should the re-analysis still not meet the acceptance criteria, then attempt a repair, then, should the repair not pass muster, call for replacement of the component. Alternatively, the program could directly select replacement, and eliminate any need to re-analyze or repair. Another option for corrective action would be re-analysis alone, or repair alone. They are all corrective actions as described in GALL, and as such have all been found reasonable by the Staff. See GALL at iii.

C. New York's Request for Immediate Action does not Support Contention 26-A

New York states that the Applicant refuses to *immediately* repair or replace components that will have CUFs above 1.0. NY Request at 4. New York cites no authority to prove that the application is somehow deficient for failure to include a proposal to replace components *now*. If New York is alleging that a current operating issue exists because certain components need replacement now,¹² then it should avail itself of the NRC's current safety regulations (i.e. request agency action under 10 C.F.R. § 2.206 (which allows any person to a request a proceeding

¹¹ New York argues for the corrective action of replacement. NY Request at 5.

¹² New York asserts that certain CUF must now be presumed to be greater than 1.0. Request at 3.

pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper) rather than intervene in a future licensing action. Additionally, the license renewal rules direct that any concerns with the current plant operations are not material to the license renewal application review.¹³

CONCLUSION

For the reasons stated above, New York Contention 26-A fails to satisfy the admissibility standards of 10 C.F.R. § 2.309(f), and fails to show any reason to believe that the LRA does not meet the requirements of 10 C.F.R. § 54.21(c). Accordingly, the Staff opposes New York's request that New York Contention 26-A be admitted.

Respectfully submitted,

/RA/

David E. Roth
Counsel for NRC Staff

Dated at Rockville, Maryland
this 21st day of April, 2008

¹³ Per 10 C.F.R. § 54.30, matters not subject to a renewal review are:

(a) If the reviews required by § 54.21 (a) or (c) show that there is not reasonable assurance during the current license term that licensed activities will be conducted in accordance with the CLB, then the licensee shall take measures under its current license, as appropriate, to ensure that the intended function of those systems, structures or components will be maintained in accordance with the CLB throughout the term of its current license.

(b) The licensee's compliance with the obligation under Paragraph (a) of this section to take measures under its current license is not within the scope of the license renewal review.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO NEW YORK STATE'S REQUEST FOR ADMISSION OF SUPPLEMENTAL CONTENTION 26-A (METAL FATIGUE)," dated April 21, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, with copies by electronic mail, as indicated by double asterisk, this 21st day of April, 2008:

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