

October 12, 2010

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 ANSWER TO  
STATE OF NEW YORK'S MOTION FOR LEAVE TO FILE  
ADDITIONAL BASES FOR PREVIOUSLY-ADMITTED CONTENTION NYS-25

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), and the Atomic Safety and Licensing Board's ("Board's") July 1, 2010 Scheduling Order,<sup>1</sup> 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 "NYS") motion for leave to file additional bases for Contention NYS-25<sup>2</sup> and the Additional Bases attached thereto,<sup>3</sup> filed on September 15, 2010. As more fully set forth below, the Staff opposes

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<sup>1</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Scheduling Order" (July 1, 2010) (unpublished).

<sup>2</sup> "State Of New York's Motion For Leave To File Additional Bases For Previously-Admitted Contention NYS-25 In Response To Entergy's July 14, 2010 Proposed Aging Management Program For Reactor Pressure Vessels And Internal Components" (Sept. 15, 2010) ("Motion"). New York's Motion was supported by the "Declaration of Dr. Richard T. Lahey, Jr.," dated September 15, 2010 ("Lahey Declaration").

<sup>3</sup> "Additional Bases for Previously-Admitted Contention NYS-25 (Embrittlement of Reactor Pressure Vessels and Associated Internals)" (Sept. 15, 2010) ("Additional Bases"). New York presented its additional bases in numbered paragraphs 3.1 - 3.5 and 7.1 - 7.8.

the admission of New York's proffered additional bases for Contention NYS-25, on the grounds, *inter alia*, that the proffered bases do not present a genuine dispute of material fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

### BACKGROUND

On April 23, 2007, Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") filed an application to renew the operating licenses for Indian Point Nuclear Generating Units 2 and 3 ("IP2" and "IP3") for an additional period of 20 years. On May 11, 2007, the NRC published a notice of receipt of the Indian Point license renewal application ("LRA"),<sup>4</sup> and on August 1, 2007, the NRC published a notice of acceptance for docketing and notice of opportunity for hearing on the LRA.<sup>5</sup>

On October 18, 2007, this Board was established to rule on petitions to intervene and requests for hearing, and to preside over any proceeding that may be held with respect to the license renewal application.<sup>6</sup> On November 30, 2007, petitions for leave to intervene and contentions were filed by various petitioners, including New York.<sup>7</sup> On January 22, 2008, answers to the petitions were filed by the Applicant and the Staff,<sup>8</sup> on July 31, 2008, following the

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<sup>4</sup> "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).

<sup>5</sup> "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).

<sup>6</sup> "Establishment of Atomic Safety and Licensing Board," 72 Fed. Reg. 60,394 (Oct. 24, 2007).

<sup>7</sup> "New York State Notice of Intention to Participate and Petition to Intervene" (Nov. 30, 2007).

<sup>8</sup> See, e.g., "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, (continued. . .)

conduct of oral argument, the Board issued its decision ruling on the petitioners' standing to intervene and the admissibility of their contentions.<sup>9</sup> In its decision, the Board, *inter alia*, granted New York's petition to intervene and admitted Contention NYS-25. As stated by the Board, Contention NYS-25 asserts as follows:

Entergy's license renewal application does not include an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor pressure vessels ("RPVs") and the associated internals.<sup>10</sup>

On July 15, 2010, Entergy submitted new information regarding its program for the aging management of reactor vessel internals, as set forth in LRA Amendment 9 ("LRA-9").<sup>11</sup> In LRA-9, Entergy submitted, *inter alia*, a "completely new" LRA § B.1.42, entitled "Reactor Vessel Internals Program" ("RVI Program"),<sup>12</sup> based upon the Electric Power Research Institute's ("EPRI") Materials Reliability Program ("MRP") guidelines and standards.<sup>13</sup> *Id.* at 84. On

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(. . .continued)

Inc., (6) the Town of Cortlandt, and (7) Westchester County" (Jan. 22, 2008) ("Staff Response to Initial Petitions"); "Answer of Entergy Nuclear Operations, Inc. Opposing New York State Notice of Intention to Participate and Petition to Intervene" (Jan. 22, 2008) ("Entergy's Response to New York's Initial Petition").

<sup>9</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

<sup>10</sup> *Indian Point*, LBP-08-13, 68 NRC at 129; capitalization omitted.

<sup>11</sup> Letter from Paul M. Bessette, Esq. to the Board, "Notification of Entergy's Submittal of the Reactor Vessel Internals Program for Indian Point Units 2 and 3" (July 15, 2010), enclosing NL-10-063, Letter from Fred Dacimo, Entergy, to NRC Document Control Desk, "Amendment 9 to [LRA] - Reactor Vessel Internals Program" ("NL-10-063").

<sup>12</sup> See LRA-9 at 84-90.

<sup>13</sup> MRP-227, "Materials Reliability Program: Pressurized Water Reactor Internals Inspection and Evaluation Guidelines"; MRP-228, "Materials Reliability Program: Inspection Standard for PWR Internals." Entergy observed that MRP-227 and MRP-228 have been submitted to the NRC for review; Entergy has committed to incorporate into the Indian Point RVI Program "any changes resulting from the NRC's review of the documents." LRA-9 at 84.

September 15, 2010, New York filed the instant motion, proffering its additional supporting bases for Contention NYS-25, as supported by the additional Declaration of its expert, Dr. Lahey.

### DISCUSSION

#### I. Legal Standards Governing the Admissibility of Contentions.

The legal requirements governing the admissibility of contentions are well established, and are currently set forth in 10 C.F.R. § 2.309. In brief, a contention 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;
- (vi) [P]rovide 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) – (vi).<sup>14</sup> Further, the Commission has stated that "the focus of a hearing on a proposed licensing action is the adequacy of the application to support the

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<sup>14</sup> 10 C.F.R. § 2.309(f)(1)(vii) applies to a COL proceeding under 10 C.F.R. § 52.103(b), and is inapplicable to a license renewal proceeding.

licensing action, not the nature of the NRC Staff's review." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station), CLI-08-17, 68 NRC 231, 237 (2008), citing *Pa'ina Hawaii, LLC*, CLI-08-3, 67 NRC 151, 168 n.73 (2008).

The Commission has recently noted that when determining the proper focus of a contention, the "NRC opinion has long referred back to the bases set forth in support of the contention." *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC \_\_, \_\_ (March 26, 2010), slip op. at 28 (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002) (Catawba/McGuire)). The reach of a contention hinges upon the contention's terms coupled with the stated bases. *Id.* The NRC's contention rules require reasonably specific factual and legal claims to assure that matters admitted for hearing have at least some minimal foundation, are material to the proceeding, and provide notice to opposing parties of the issues they must defend. *Id.*

The Board in this proceeding has previously addressed, in detail, the requirements for contentions. See *Indian Point*, LBP-08-13, 68 NRC at 60-64. As summarized by the Board, the Petitioners must provide a brief explanation of the basis for the contention. *Id.* at 61. Second, they must show that the issue is within the scope of the proceeding. *Id.* at 62. Third, they must show the materiality of the issue, *i.e.* "that the subject matter of the contention would impact the grant or denial of a pending license application." *Id.*<sup>15</sup> Fourth, they must provide a concise allegation of supporting facts or expert opinions. *Id.* at 62-64. Mere notice pleading is

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<sup>15</sup> With respect to materiality, the Commission has held that a contention must be based on a genuine material dispute, not the possibility that petitioners, if they perform their own additional analyses, may ultimately disagree with the application. *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 480 (2006).

insufficient, as are bare assertions and speculation. *Id.* at 63. Fifth, the contention must show a genuine dispute with the license application, challenging a portion of the application or showing an omission from the application. *Id.* at 64. Sixth, the proffered contention must not challenge NRC rules or regulations. *Id.*

Finally, after the deadline for submission of initial contentions has passed, any further new or amended contentions must be timely submitted under 10 C.F.R. § 2.309(f)(2)(iii), or supported by a showing that the “good cause” and other factors specified in 10 C.F.R. § 2.309(c)(i)-(viii) support the admission of a non-timely contention. In this regard, the Board has provided that new contentions shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if filed “within thirty days of the date when the new and material information on which it is based first becomes available.”<sup>16</sup> More specifically, the Board afforded New York an extension of time, until September 15, 2010, to file new or amended contentions “arising from Entergy’s Ninth Amendment to the [LRA] concerning embrittlement of reactor pressure vessel components.”<sup>17</sup>

II. New York’s Additional Bases for Contention NYS-25 Should Be Rejected.

As discussed above (*supra*, at 3), Contention NYS-25, as admitted, states as follows:

Entergy's license renewal application does not include an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor pressure vessels (“RPVs”) and the associated internals.<sup>18</sup>

Indian Point, LBP-08-13, 68 NRC at 129. In admitting this contention, the Board concluded that

<sup>16</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Scheduling Order” (July 1, 2010), at 6.

<sup>17</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Order (Granting New York’s Motion to Extend Deadline for Filing New Contentions)” (Aug. 12, 2010), at 1.

<sup>18</sup> *Indian Point, LBP-08-13, 68 NRC at 129*; capitalization omitted.

the issue of whether an AMP is necessary to manage the cumulative effects of embrittlement of the RPVs and associated internals is within the scope of the proceeding, and it found that New York's expert (Dr. Lahey) had provided sufficient support for the contention. *Id.*

Significantly, in its decision admitting Contention NYS-25, the Board did not explicitly consider the specific differences in the LRA between requirements for the RPV<sup>19</sup> and requirements for the reactor vessel internals.<sup>20</sup> As discussed below, however, that distinction must now be addressed, in that New York's proffered amended bases repeatedly confuse those requirements and incorrectly assign (inapplicable) RVI requirements to the RPV.<sup>21</sup> This distinction is critical here, in that LRA-9 – which triggered the filing of New York's Amended Bases – addresses only the RVI and does not alter the LRA's treatment of RPV embrittlement.

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<sup>19</sup> The RPV is a single, large component, that is part of the "reactor coolant pressure boundary" ("RCPB") — which is defined in 10 C.F.R. § 50.2 as follows:

Reactor coolant pressure boundary means all those pressure-containing components of boiling and pressurized water-cooled nuclear power reactors, such as pressure vessels, piping, pumps, and valves, which are:

- (1) Part of the reactor coolant system, or
- (2) Connected to the reactor coolant system, up to and including [certain specified valves].

The regulations in 10 C.F.R. § 50.60 and 10 C.F.R. Part 50, Appendices G and H, address the fracture toughness and material surveillance program requirements for the reactor pressure vessel.

<sup>20</sup> See LBP-08-13, 68 NRC at 131. The Board noted, but did not discuss, Entergy's and the Staff's arguments that New York had failed to address the specific provisions in the LRA that applied to the RPV, and had confused the separate requirements that apply to the RVI and RPV. See *id.* at 129-30; Entergy's Response to New York's Initial Petition, at 135-41; Staff Response to Initial Petitions, at 76.

<sup>21</sup> See, e.g., *Northern States Power Co. (Formerly Nuclear Management Co., LLC)* (Prairie Island Nuclear Generating Plant, Units 1 and 2) 68 N.R.C. 905, 936-37 (2008) (distinguishing between RPV and RVI requirements in the Prairie Island license renewal application).

A. New York's Additional Proffered Bases for Contention NYS-25.

In its Additional Bases, New York alleges that the LRA-9 AMP fails to address the "synergistic aging effects of embrittlement and fatigue." Additional Bases at 1. In addition, New York states that the AMP fails to specify when a "baseline" inspection will be completed, and that the AMP's failure to require the baseline inspections before the period of extended operation violates 10 C.F.R. § 54.21(c)(1)(iii). *Id.* at 1-2. Further, New York asserts that the AMP must specify in advance when repair or replacement will occur, must identify preventive actions, and must rely on ultrasonic testing ("UT") instead of remote visual exams ("VT-3"). Additional Bases at 2. Finally, New York alleges that the AMP relies on commitments to take corrective actions, and asserts that Entergy cannot meet its commitments. Additional Bases at 2 & 4-5. As discussed below, none of these assertions rests upon any established regulatory requirement, nor do they rest upon any showing that the AMP set forth in LRA-9 is inadequate; rather, these claims constitute New York's (or its expert's) personal view of what should be required in an AMP for reactor vessel internals. None of the "additional bases" specified by New York establish an admissible basis for Contention NYS-25.

B. Concerns Regarding the RPV and Items Other Than the RVI Are Beyond the Scope of LRA-9.

In LRA-9, Entergy submitted its RVI AMP. Significantly, the scope of this AMP does not include the RPV and other components of the reactor coolant system pressure boundary. See LRA-9 at 85.<sup>22</sup> Thus, as a threshold matter, New York's claims that the RVI AMP fails to address

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<sup>22</sup> Indeed, Entergy's recent submittal (LRA-9) is entitled "Reactor Vessel Internals Program." See discussion *supra*, at 3 n.11; LRA-9 § B.1.42, at 84-90. Further, as stated in LRA-9, "[t]he scope [of this AMP] does not include welded attachments to the reactor vessel which are considered part of the vessel, or nuclear instrumentation (flux thimble tubes) which forms part of the reactor coolant pressure boundary. Other programs manage the effects of aging on these components." LRA-9 at 85; emphasis added.

the RPV (e.g., Motion at 4; Lahey Declaration at 14-15) are inadmissible for failure to state a genuine dispute with the application. 10 C.F.R. § 2.309(f)(1)(vi). New York is simply incorrect in its claim that Entergy submitted the RVI AMP to address aging of the RPV (Motion at 1).<sup>23</sup>

Moreover, New York's amended bases do not address the LRA's discussion of RPV neutron embrittlement, the associated TLAAs, or Entergy's approach to managing the effects of RPV neutron embrittlement under 10 C.F.R. § 54.21(c)(1), as set forth in LRA § 4.2, "Reactor Vessel Neutron Embrittlement" (2007), as amended. Further, any claims about the RPV are impermissibly late at this time, inasmuch as provisions concerning the RPV were submitted long ago, and the recently-submitted RVI AMP in LRA-9 provides no new information on managing the RPV. Thus, the RVI AMP does not support a timely amended contention or additional basis for a contention challenging the AMP for the RPV. See 10 C.F.R. § 2.309(f)(2). New York has not shown that the RVI AMP is legally-required to age-manage the RPV, thus New York has not shown this basis to be admissible. 10 C.F.R. § 2.309(f)(1)(vi).

Similarly, New York State asserts that the RVI AMP does not address other items that are not within the scope of the RVI AMP. For example, New York State says that the RVI AMP does not address "the control rods" (Additional Bases at 1). This is not surprising, as the RVI AMP was not intended to address such matters; Entergy's LRA-9 states, "[t]he scope does not include consumable items such as fuel assemblies and reactivity control assemblies which are periodically replaced based on neutron flux exposure." LRA-9 at 85. Again, New York State has not shown that the RVI AMP must include this information, thus it has not supported a contention

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<sup>23</sup> In its Motion, New York repeatedly states that LRA-9 was submitted in part to address aging of the RPV; for example, New York states, "[t]he Additional Bases describe a number of deficiencies in Entergy's submission regarding its AMP for embrittlement of RPV and internal components." Motion at 5. However, in this respect, New York's Motion is mistaken; the Additional Bases, like the RVI AMP itself, do not address the RPV.

of omission. 10 C.F.R. § 2.309(f)(1)(vi).<sup>24</sup>

C. New York's Concerns Regarding the RVI Should Be Rejected.

In addition to its claims regarding the RPV and other non-RVI structures, systems and components ("SSCs") (discussed above), New York proffers numerous concerns regarding managing the effects of aging for the RVI. None of those claims establish an admissible basis for Contention NYS-25.

1. A Single AMP Is Not Required to Address Synergistic Effects.

First, New York asserts that the LRA-9 AMP fails to address the "synergistic aging effects of embrittlement and fatigue." Additional Bases at 1. New York does not show how this claim amounts to a contention of omission of legally-required information. 10 C.F.R. § 2.309(f)(1)(vi). New York does not frame its contention against what is present in the application, thus does not put the other parties on notice as to what it contends is missing in the LRA regarding the consideration of "synergistic aging effects." Thus, the LRA considered that the reactor vessel internals environment required consideration of neutron fluence and treated borated water at high and moderate temperatures, and it identified three distinct programs to manage the effects on reactor vessel internals: (1) Inservice Inspection, (2) Thermal Aging and Neutron Irradiation Embrittlement of Cast Austenitic Stainless Steel, and (3) Water Chemistry Control - Primary and Secondary. LRA § 3.1.2.1.2. NYS does not explain how the LRA's approaches to aging management for RVIs, using multiple AMPs, overlooked an alleged "synergistic" aging effect.

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<sup>24</sup> Other items mentioned by Dr. Lahey, *i.e.*, "[control rod-] associated guide tubes, plates, and welds" (Lahey Declaration at 13) are addressed in LRA-9. *See, e.g.*, LRA-9 at 4-6, 85; Lahey Declaration at 13. Similarly, Dr. Lahey's allegations regarding various other items, such as shells, plates, bolts, and shields (Lahey Declaration at 8), appear to be addressed in LRA-9 (at 1). Dr. Lahey's concerns about the control rod drive stub tube and the recent Davis Besse boric acid corrosion event (Lahey Declaration at 13-15), pertain to items addressed through the "Reactor Vessel Head Penetration Inspection" program (LRA § B.1.31 (2007)), the adequacy of which Dr. Lahey does not dispute.

Instead, the Board and other parties are left to guess why the LRA's aging management programs are insufficient. This unexplained assertion is insufficient to support a contention. See, e.g., *Pilgrim*, CLI-10-11, slip op. at 28.

2. Advance Baseline Inspections Are Not Required.

While New York recognizes that LRA-9 provides for baseline inspections (see, e.g., Lahey Declaration at 16), New York would require specificity as to when those inspections will be performed, and it objects to the RVI AMP for not requiring baseline inspections in advance of the PEO. Additional Bases at 1-2. In an analogous situation dealing with a claim that baseline calculations must be performed, the Commission recently ruled that nothing in the regulations suggests that baseline calculations are prerequisites to establish the parameters of an AMP. *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 71 NRC \_\_ (July 8, 2010), slip op. at 43. Apart from proffering its own opinion that baseline inspections should be required before the PEO, New York fails to point to any regulation that would require such inspections to occur on New York's schedule. Nor has New York provided any reason to believe that LRA-9 is inadequate for failing to specify when the baseline inspections will be performed and for not requiring baseline inspections prior to the PEO. Therefore, these claims do not provide a genuine dispute of material fact as required for the admission of this basis for the contention. 10 C.F.R. § 2.309(f)(1)(vi).

3. Additional Details of Corrective Actions Are Not Required.

New York asserts that the AMP must specify in advance when repair or replacement will occur. Additional Bases at 2. This Board has already addressed the topic of when to initiate corrective action, and found that there is nothing in the regulations that requires Entergy to implement action at any specific time, as aging can be adequately managed by taking corrective action "when it is needed." *Indian Point*, LBP-08-13, 68 NRC at 140 (discussing metal fatigue).

A similar conclusion applies here, and requires that this aspect of the Additional Bases be rejected for failing to provide a genuine dispute of material fact. 10 C.F.R. § 2.309(f)(1)(vi).

4. An AMP Is Not Required to Use Preventative Actions.

New York asserts that the AMP does not include preventive actions. Additional Bases at 2. This fact, however, is undisputed by Entergy's LRA-9, which clearly states "The Reactor Vessel Internals Program is a condition monitoring program that does not include preventative actions." LRA-9 at 86 § B.1.42.2. New York provides no support for its view that this AMP – which, by definition, is intended to monitor the effects of aging – must take preventive, rather than corrective, action. Indeed, the GALL Report contains other AMPs that have been found to be acceptable, which rely on monitoring and detection of aging effects and corrective actions, and explicitly exclude reliance on preventive actions. See, e.g., GALL Report § XI.M14, "Loose Parts Monitoring." New York has not identified any requirement that preventive actions (the nature of which New York does not specify) instead of corrective actions must be taken as part of an AMP for license renewal, and this aspect of the Additional Bases is therefore inadmissible. 10 C.F.R. § 2.309(f)(1)(vi).

5. The AMP Need Not Use the Inspection Method Favored by New York.

New York asserts that the AMP is inadequate for not requiring ultrasonic testing ("UT") instead of remote visual ("VT-3") examinations for certain components. Additional Bases at 2. New York does not explain how the omission of UT from the AMP amounts to the omission of a required element of the AMP. Accordingly, this claim does not provide a genuine dispute of material fact as required for the admission of this basis for the contention. 10 C.F.R. § 2.309(f)(1)(vi).<sup>25</sup>

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<sup>25</sup> See, e.g., USEC, CLI-06-10, 63 NRC at 480 (2006) (the possibility that petitioners' analyses (continued. . .)

6. Current Performance Concerns Do Not Support New York's Assertion that Entergy's Commitments Are Unacceptable.

New York asserts that the AMP in LRA-9 relies on commitments to take corrective actions, and that Entergy's performance under its current operating license shows that it cannot meet its commitments. Additional Bases at 2 & 4-5. This claim does not provide an acceptable basis for the contention. As this Board has already ruled, commitments afford an acceptable basis for license renewal. *Indian Point*, LBP-08-13, 68 NRC at 139. Further, New York assertion that "growing evidence" of Entergy's inadequate performance under its current license shows that its commitments might not be met, does not present an admissible basis for the contention; as the Commission recently held, "conceptual issues" such as competence, management, and quality assurance are beyond the limited scope of a license renewal proceeding, which is concerned with "the passive, safety-related *physical* systems, structures and components that form the scope of our license renewal review." *See Northern States Power Co.*, (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 71 NRC \_\_, \_\_ (Sept. 30, 2010), slip op. at 11-12. Thus, this portion of the Additional Bases must be rejected.

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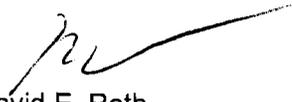
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may differ from the applicant's analyses does not create a genuine material dispute needed to support a contention).

CONCLUSION

As discussed above, New York's newly-submitted additional bases for Contention NYS-25 fail to state a genuine dispute of material fact. Accordingly, New York's additional bases for this contention should be rejected, in accordance with 10 C.F.R. § 2.309(f)(1) (vi).

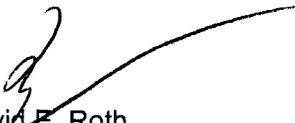
Respectfully submitted,



David E. Roth  
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Counsel for NRC Staff

Answer Certification

Pursuant to the Board's Order of July 1, 2010, I certify that I made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.



David E. Roth  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 12<sup>th</sup> day of October 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

I hereby certify that copies of the "NRC STAFF'S ANSWER TO STATE OF NEW YORK'S MOTION FOR LEAVE TO FILE NEW BASES CONCERNING THE LICENSE RENEWAL AMENDMENT 9" have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, or, as indicated by an asterisk, by deposit in the U.S. Postal Service, with copies by electronic mail this 12<sup>th</sup> day of October, 2010:

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