

March 7, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO STATE OF NEW YORK
CONTENTION 12-C CONCERNING THE FINAL SEIS EVALUATION OF
DECONTAMINATION AND CLEAN UP COSTS IN A SEVERE ACCIDENT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the Staff of the U.S. Nuclear Regulatory Commission ("NRC Staff") hereby files its answer¹ to the State of New York's ("New York" or "State") motion for leave to file its "New and Amended Contention 12-C," which the State filed on February 3, 2011.² In Contention 12-C, New York challenges the NRC Staff's evaluation of severe accident mitigation alternatives ("SAMAs"), as presented in Final Supplement 38 to the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" ("GEIS"), NUREG-1437 (May 1996), regarding the environmental impacts of license renewal for Indian

¹ This Answer is filed pursuant to the "Order (Granting Time Extension)," issued by the Atomic Safety and Licensing Board ("Board") on February 25, 2011.

² See (1) "State of New York's New Contention 12-C Concerning NRC Staff's December 2010 Final Environmental Impact Statement and the Underestimation of Decontamination and Clean Up Costs Associated with a Severe Reactor Accident in the New York Metropolitan Area" (Feb. 3, 2011) ("Contention 12-C"); and (2) "State of New York's Motion for Leave to File New and Amended Contention 12-C Concerning NRC Staff's December 2010 Final Supplemental Environmental Impact Statement and the Underestimation of Decontamination and Clean Up Costs Associated with a Severe Reactor Accident in the New York Metropolitan Area" (Feb. 3, 2011) ("Motion").

Point Units 2 and 3 ("IP2" and "IP3").³

For the reasons set forth below, the Staff does not oppose the admission of Contention 12-C, in part, to the extent that it seeks to apply existing Contention 12/12-A/12-B to the discussion of SAMAs presented in the Final SEIS for IP2 and IP3. In all other respects, however, the Staff opposes the admission of Contention 12-C in that it (a) relies upon information which was available to the State prior to issuance of the Final SEIS, and fails to satisfy the timeliness requirements set forth in 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2); (b) is overly vague and lacking in basis, and therefore fails to satisfy 10 C.F.R. § 2.309(f)(1)(ii), and (c) fails to raise a genuine material issue in dispute, as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Accordingly, the Staff respectfully submits that New York Contention 12-C should be rejected in substantial part, as set forth below.

BACKGROUND

On April 23, 2007, Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") filed its application to renew the operating licenses for IP2 and IP3 for an additional period of 20 years. As part of its license renewal application ("LRA"), the Applicant submitted an "Environmental Report" ("ER"), as required by 10 C.F.R. §§ 51.53(c) and 54.23. On May 11 and August 1, 2007, the NRC published, respectively, a notice of receipt of the LRA, and a notice of acceptance for docketing and notice of opportunity for hearing.⁴ On November 30, 2007,

³ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report," NUREG-1437, Supplement 38 (December 2010) ("Final SEIS" or "FSEIS").

⁴ See (1) "[Entergy]; Notice of Receipt and Availability of Application for Renewal of [IP2 and IP3]; Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period," 72 Fed. Reg. 26,850 (May 11, 2007), and (2) "[Entergy], [IP2 and IP3]; 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).

petitions for leave to intervene were filed by various petitioners, including New York.⁵ In its petition, New York filed a total of 32 contentions including, *inter alia*, Contention 12, which challenged certain aspects of the Applicant's SAMA analysis. More specifically, Contention 12 alleged that the SAMA analysis presented in the ER did not accurately reflect decontamination and clean-up costs associated with a severe accident.⁶ On July 31, 2008, the Board issued its ruling on the petitioners' standing to intervene and the admissibility of their contentions,⁷ in which it found, *inter alia*, that New York Contention 12 was admissible.⁸

On December 22, 2008, the Staff issued Draft Supplement 38 to the GEIS ("Draft SEIS"),⁹ in which it provided its evaluation of the site-specific environmental impacts of license renewal for IP2 and IP3, including its draft evaluation of the Applicant's SAMA analysis.¹⁰ On February 27, 2009, New York filed Amended Contention 12-A, along with four other new and/or amended contentions (including Contention 16-A) challenging the Draft SEIS.¹¹ On June 16, 2009, the Board issued its ruling on New York's new and amended DSEIS contentions, in which

⁵ See "New York State Notice of Intention to Participate and Petition to Intervene" ("New York Petition" or "NY Petition"), filed November 30, 2007.

⁶ NY Petition at 140-45. In addition, New York filed its Contention 16, challenging the population estimates and air dispersion model contained in the Applicant's SAMA analysis. *Id.* at 163-67.

⁷ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

⁸ *Id.*, 68 NRC at 100-02. In addition, the Board ruled that Contention 16 was admissible, in part. *Id.*, 68 NRC at 110-13.

⁹ "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 (December 2008) ("Draft SEIS" or "DSEIS").

¹⁰ See DSEIS, Chapter 5 and Appendix G.

¹¹ See "State of New York Contentions Concerning NRC Staff's Draft Supplemental Environmental Impact Statement" (Feb. 27, 2009) ("DSEIS Contentions").

it, *inter alia*, admitted Amended Contention 12-A.¹²

On December 11, 2009, the Applicant submitted a revised SAMA analysis to the NRC (hereafter, "SAMA Reanalysis"),¹³ in which it used revised meteorological data inputs to correct a discrepancy identified by the Staff in its review of Entergy's MACCS2 code SAMA analyses. By Order dated January 22, 2010, the Board granted the State's request to file new or amended contentions "based on Entergy's revised SAMA submissions" by February 25, 2010, ruling that new contentions filed by the State by February 25, 2010, "which arise out of Entergy's revised SAMA submissions from December 21, 2009, through January 20, 2010, will be deemed timely under 10 C.F.R. § 2.309(f)(2)."¹⁴ On February 25, 2010, the State filed four new and amended contentions regarding SAMA issues, including Amended Contention 12-B in which it applied the claims it had previously made in Contention 12/12-A (concerning Entergy's ER and the Staff's Draft SEIS), to the Applicant's SAMA Reanalysis.¹⁵ By Order dated June 30, 2010, the Board admitted Contention 12-B without opposition by Entergy or the Staff.¹⁶

On December 3, 2010, the Staff issued its Final SEIS regarding the environmental

¹² See "Order (Ruling on New York State's New and Amended Contentions)" (June 16, 2009), at 3-7. With respect to Amended Contention 16-A, the Board ruled that the amended contention would be admitted in part, limited to the three issues that had been admitted in Contention 16. *Id.* at 6.

¹³ Letter from Fred Dacimo, Vice President/License Renewal (Entergy Nuclear Northwest), to NRC Document Control Desk (Dec. 11, 2009) (Subject: License Renewal Application – SAMA Reanalysis Using Alternate Meteorological Tower Data, Indian Point Nuclear Generating Unit Nos. 2 & 3).

¹⁴ "Order (Granting New York's Motion to Establish February 25, 2010 As the Date by Which New York May File Contentions Related to Entergy's Revised Submission Concerning Severe Accident Mitigation Alternatives)" (Jan. 22, 2010), at 2.

¹⁵ "State of New York's New and Amended Contentions Concerning the December 2009 Severe Accident Mitigation Alternative Reanalysis" (March 11, 2010) ("SAMA Reanalysis Contentions").

¹⁶ "Memorandum and Order (Ruling on the Admissibility of New York's New and Amended Contentions 12B, 16B, 35, and 36)" (June 30, 2010), *petitions for interlocutory review on other issues denied*, CLI-10-30, 72 NRC ____ (Nov. 30, 2010).

impacts of license renewal for IP2 and IP3. Therein, the Staff provided its final evaluation of Entergy's SAMA analysis, as revised by its December 2009 SAMA Reanalysis.¹⁷ On February 3, 2011, New York filed its Amended Contention 12-C, in which it challenged the adequacy of the Staff's evaluation of SAMA decontamination and clean up costs, as presented in the Final SEIS.

DISCUSSION

I. Legal Standards Governing the Admission of Late-Filed Contentions

The standards governing the admissibility of contentions filed after the initial deadline for filing (*i.e.*, "late-filed contentions") have been addressed by this Board on numerous occasions.¹⁸ In brief, the admissibility of late-filed contentions in NRC adjudicatory proceedings is governed by three regulations. These are: 10 C.F.R. § 2.309(f)(2), concerning new and timely contentions, 10 C.F.R. § 2.309(c), concerning non-timely contentions, and 10 C.F.R. § 2.309(f)(1), establishing the general admissibility requirements for contentions.¹⁹

A. Standards Governing Contention Admissibility

For any contention to be admitted, the petitioner must show that the contention meets the general admissibility requirements of 10 C.F.R. § 2.309(f)(1). The requirements of this regulation were addressed at length by the Board in its initial ruling on contentions.²⁰ Specifically, in order to be admitted, a contention must satisfy the following requirements:

¹⁷ See FSEIS Chapter 5 and Appendix G.

¹⁸ See, *e.g.*, "Order (Denying Clearwater's Petition to File a New Contention)" (May 28, 2009), at 2-4; "Order (Ruling on New York State's New and Amended Contentions)" (June 16, 2009), at 2.

¹⁹ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Ruling on New York State's New and Amended Contentions)" (June 16, 2009) (unpublished), slip op. at 2; *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 571-72 (2006).

²⁰ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 60-64 (2008).

(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;

(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; and

(vi) 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). This Board has summarized the purpose for the contention filing requirements in § 2.309(f)(1), as follows:

The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." 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." The Commission has emphasized that the rules on contention admissibility are "strict by design." Failure to comply with any of these requirements is grounds for the dismissal of a contention.

Indian Point, LBP-08-13, 68 NRC at 61 (footnotes omitted); 10 C.F.R. § 2.309(f)(1)(i)-(vi).

B. Contentions Filed After the Initial Date Specified for Filing

In addition to meeting the general admissibility standards specified above, a contention filed after the initial date for filing specified in the original *Federal Register* Notice of Opportunity for Hearing (or as later specified by the presiding officer or Board) may be admitted as timely if it meets the requirements of 10 C.F.R. § 2.309(f)(2). Under this provision, a contention filed after the initial filing period may be admitted with leave, if it meets the following requirements:

(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 file 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 new contentions 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 is materially different than information previously available; and

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

10 C.F.R. § 2.309(f)(2) (emphasis added); *cf. Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998) (“intervenors must file their environmental contentions as soon as possible, even before issuance of the draft EIS, if the contested issue is

addressed in the applicant's ER. See 10 C.F.R. § 2.714(b)(2)(iii)" [i.e., current § 2.309(f)(2)].²¹

Second, a contention that does not qualify for admission under 10 C.F.R. § 2.309(f)(2) may be admissible under the standards governing nontimely contentions, set forth in 10 C.F.R. § 2.309(c)(1). As stated therein, nontimely contentions "will not be entertained" absent a determination by the Board that they should be admitted based upon a balancing of eight specified factors. Pursuant to 10 C.F.R. § 2.309(c)(2), each of these factors is required to be addressed in a nontimely filing; the most important of these is a demonstration of "(i) [g]ood cause, if any, for the failure to file on time."²²

II. The Admissibility of New York's Amended SAMA Contention 12-C.

In Amended Contention 12-C, the State challenges the Staff's evaluation of severe accident decontamination and clean-up costs, as presented in the FSEIS – thereby amending its previous challenges to the discussion of such matters in the Applicant's ER (Contention 12), the Staff's DSEIS (Contention 12-A), and the Applicant's December 2009 SAMA Reanalysis (Contention 12-B). Inasmuch as the Board has previously admitted Contention 12/12-A/12-B, the Staff does not oppose the admission of Contention 12-C, to the extent that it seeks to amend the previous contention(s) to challenge the FSEIS's evaluation of these matters.

The Staff, however, opposes the admission of all other portions of Contention 12-C and its bases, in which the State presents numerous assertions and references that it failed to raise

²¹ *Accord, Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-79, 16 NRC 1116, 1118 (1982) (a contention based on dose calculations in a draft EIS was ruled untimely where the dose calculation was published months earlier in the applicant's safety analysis).

²² See, e.g., *State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993). Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (quoting *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977)).

in its previous iterations of this contention.²³ As set forth below, the State has not demonstrated good cause for its failure to raise those matters previously, and has not shown that the information on which those assertions are based was not available earlier; accordingly, those matters should be rejected as failing to satisfy the requirements of 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2). Further, Contention 12-C contains several new assertions that are overly vague and lacking in basis, and fail to raise a material issue for litigation; those assertions should be rejected as failing to satisfy the requirements of 10 C.F.R. §§ 2.309(f)(ii), (iv), and (vi). The Staff's position with respect to each of the assertions in Contention 12-C is set forth below.

A. Amended Contention 12-C

Contention 12-C revises Contention 12-B, as follows (deletions from Contention 12-B are shown in strikeout, insertions are shown in underlining):

~~The December 14, 2009 SAMA Re-Analysis~~ December 2010
FSEIS Analysis for IP2 and IP3 underestimates decontamination
and clean up costs associated with a severe accident in the New
York metropolitan area and, therefore, underestimates the cost of
~~a severe accident and fails to consider mitigation measures which~~
are related to license renewal in violation of NEPA, APA, and NRC
and CEQ regulations.

Contention 12-C, at 3 (capitalization omitted). In support of this contention, New York presents 39 numbered "basis" paragraphs, along with a February 2008 report by David I. Chanin.²⁴

²³ In contrast, Contention 12-B essentially restated the previous iterations of this contention. Thus, the Staff did not oppose the admission of Contention 12-B, having determined that the State's bases and supporting evidence statements were "substantially identical to the bases and supporting evidence statements that the State had previously submitted in support of Contention 12 and revised Contention 12-A, albeit modified to address the Applicant's SAMA Reanalysis." See "NRC Staff's Answer to State of New York's New and Amended Contentions Concerning the December 2009 Severe Accident Mitigation Alternative Reanalysis" (April 5, 2010), at 11-12.

²⁴ Chanin, David I., "Errors and Omissions in NRC Staff's Economic Cost Estimates of Severe Accident Mitigation Alternatives Analysis Contained in December 2010 Indian Point [FSEIS]" (Feb. 2011) ("Chanin Report").

Contention 12-C raises, for the first time, issues as to whether the FSEIS evaluation of decontamination and clean-up costs satisfies the Administrative Procedure Act (APA), and various NRC and Council on Environmental Quality ("CEQ") regulations. The State has not shown, however, that the NRC (an independent regulatory agency) is obliged to comply with the cited CEQ regulations; this portion of the contention should therefore be rejected as raising an issue that is not material for litigation in this proceeding, in accordance with 10 C.F.R. §§ 2.309(f)(1)(iv) and (f)(1)(vi).²⁵ Further, the State's newly-raised issues concerning compliance with the APA and NRC or CEQ regulations could have been, but were not, raised earlier. Thus, the State's new assertions regarding compliance with "APA, and [unspecified] NRC and CEQ regulations," as well as the new claims presented in its "basis" statements regarding information that was available previously, should be rejected as non-timely pursuant to 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

Significantly, Contention 12-C presents additional information and citations to reports that it could have introduced earlier, which it appears to have gleaned entirely from Dr. Chanin's February 2011 report and the publicly available documents cited therein. See Motion at 4, 5-6, and 9, *citing* FSEIS App. G, § G.2.3. The State's citation to Dr. Chanin's report and the documents he cites should be rejected in that (a) the State has not shown that the information it relies upon was not available earlier, and (b) the Chanin report addresses the FSEIS Appendix G discussion of the State's own contentions, rather than the FSEIS evaluation of Entergy's SAMA analysis. Thus, the Applicant's ER and its December 2009 SAMA Reanalysis, as well as

²⁵ See, e.g., *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002) ("Although the Commission is "not bound by CEQ regulations that it has not expressly adopted, [it] gives those regulations 'substantial deference'" (citation omitted)); *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 222 n.21 (2007). The Commission has announced a policy to "take account" of the CEQ regulations "voluntarily." 10 C.F.R. § 51.10(a), and to this end, has promulgated its regulations in 10 C.F.R. Part 51.

the Staff's DSEIS, all contained an evaluation of severe accident mitigation alternatives, including consideration of decontamination and clean-up costs. The newly raised basis statements for Contention 12-C (discussed *infra*) involve the radionuclide particle size and decontamination cost estimates accepted in the FSEIS – but the State has not pointed to any way in which the FSEIS discussion of these matters differs significantly from the DSEIS, the ER or the December 2009 SAMA Reanalysis, nor has the State shown that the information it relies upon in support of this revision of Contention 12/12-A/12-B was not available previously. Rather, the only “new” information in the FSEIS, by the State’s own admission, is that the Staff there addresses the State’s contentions. See Motion, at 4 and 9. As discussed *infra*, the Staff’s evaluation of a party’s contentions in the proceeding fails to raise a material issue for litigation.

Further, as this Board has previously held, where an amended contention is filed in response to the issuance of an environmental impact analysis, the intervenor is obliged to show that its newly-presented assertions are based upon new information in that document which was not available earlier.²⁶ Consistent with these rulings and established case law, any new or amended contentions must be rejected as untimely, to the extent that they raise matters which could have been raised previously (such as in response to the Staff’s Draft SEIS) and are not supported by a favorable balancing of the factors set forth in 10 C.F.R. § 2.309(c) and (f)(2). See, e.g., *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 89 (1998). The State’s assertions based on information that was available previously, should therefore be rejected as non-timely pursuant to 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

²⁶ Thus, in its Order regarding the filing of DSEIS contentions, the Board reiterated that “any new contentions may only deal with new environmental issues raised by the Draft SEIS. . . . The Board will not entertain contentions based on environmental issues that could have been raised when the original contentions were filed.” “Memorandum and Order (Summarizing Pre-Hearing Conference) (Feb. 4, 2009), at 2-3. Similarly, in its Order regarding the filing of contentions on the Applicant’s December 2009 SAMA Reanalysis, the Board ruled that such contentions will be considered timely only insofar as they are “based on” or “arise out of Entergy’s revised SAMA submissions.” Order of January 22, 2010, at 2.

B. Basis Statements and Information Provided in Support of Contention 12-C

In support of Contention 12-C, the State presents 39 numbered "Basis" statements, along with a report prepared by David Chanin in February 2011. As set forth below, many of the assertions and supporting information contained in the State's "Basis" statements raise issues that are immaterial, or are inadmissible or untimely, and should be rejected. The Staff herein responds to each of those Basis statements, *seriatim*.

1. Paragraph 1 incorporates and applies Contention 12/12A/12B to the FSEIS. The Staff does not oppose the admission of this paragraph.²⁷

2. Paragraph 2 refers to the Staff's issuance of the FSEIS. The Staff does not oppose the admission of this paragraph.

3. Paragraph 3 generally describes the need for "accurate" SAMA analyses, and cites the requirements of 10 C.F.R. § 51.53(c)(3)(ii)(L). The Staff does not oppose the admission of this paragraph.²⁸

4. Paragraph 4 generally asserts that an EIS must contain "'high quality' information and 'accurate scientific analysis.'" The Staff does not oppose the admission of this paragraph, except insofar as it incorrectly states or suggests that the NRC (an independent regulatory agency) is obliged to comply with CEQ regulations in 40 C.F.R. §§ 15001(b) and 1502.24. See discussion *supra* at 11. Nor has the State shown that it could not have raised these claims earlier. The references to the CEQ's regulations and case law should therefore be stricken.

5. Paragraph 5 presents various generalized assertions regarding the alleged

²⁷ While the Staff does not oppose the admission of this or certain other portions of the contention, the Staff does not concede the merits of those portions of the contention.

²⁸ The Staff notes that the cited regulation applies to the Environmental Reports filed by license renewal applicants; that regulation is applied to the Staff's environmental impact statements by 10 C.F.R. §§ 51.71(a) and 51.90.

inadequacy of the Staff's FSEIS, and generally appears to restate, without substantial modification, the State's claims in its original Contention 12. While the State could have presented these statements previously with respect to the DSEIS or the Applicant's analyses, the Staff does not oppose the admission of this paragraph.

6. Paragraph 6 reiterates the State's claims in Contention 12-B, ¶ 1. The Staff does not oppose the admission of this paragraph.

7. Paragraph 7 claims that the FSEIS "relies on inaccurate and inapplicable data input into the cost formula," resulting in a "substantial underestimation" of costs." In support of this claim, the State cites and relies upon Dr. Chanin's report. The Staff opposes the admission of this paragraph. Although Dr. Chanin issued his report in February 2011, following the Staff's issuance of the FSEIS, New York does not explain why it could not have asked him to prepare that report to support the filing of contentions concerning the Staff's DSEIS, the Applicant's ER, or the Applicant's December 2009 SAMA Reanalysis. The Commission has rejected the idea that publication of a new document can transform previously available material into new information sufficient to support a new contention.²⁹ Thus, a determination of whether information is new is determined, not by the date the petitioner discovers the information or realizes its significance, but by the date on which the information became available to it.³⁰ Further, while Paragraph 7 claims the FSEIS "relies on inaccurate and inapplicable data input

²⁹ *Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-09-7, 69 NRC 235, 272-73 (2009) (affirming the Board's rejection of numerous late-filed contentions).

³⁰ *Union of Concerned Scientists v. NRC*, 920 F.2d 50, 55 (D.C. Cir. 1990) ("we think it unreasonable to suggest that the NRC must disregard its procedural timetable every time a party realizes based on NRC environmental studies that maybe there was something after all to a challenge it either originally opted not to make or which simply did not occur to it at the outset"); *Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3)*, CLI-09-5, 69 NRC 115, 126 (2009) (petitioner could not justify good cause for a late filed contention on information that was previously reasonably available to the public but only recently discovered by the petitioner).

into the cost formula,” and points to an accident that releases “cesium-137 and other fission products,” the State makes no attempt to show that the data or accident releases addressed in the FSEIS are any different from those addressed in the DSEIS. This paragraph should therefore be rejected in accordance with 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

Moreover, the State appears to rely on Dr. Chanin’s report (and the arguments and documents cited therein) to rebut the Staff’s assessment of the State’s own contentions, set forth in FSEIS Appendix G, § G.2.3 at G-22 – G-29. See Motion at 4 and 9. That discussion, prepared specifically for purposes of this litigation, does not constitute part of the Staff’s evaluation of the Applicant’s SAMA analysis; rather, it addresses, specifically, the claims made by the State in this proceeding.³¹ In this regard, it is well established that claims concerning the adequacy of the Staff’s evaluations, as distinct from the adequacy of an applicant’s LRA, fail to present an admissible contention; nor does the State’s interest in disputing the Staff’s evaluation of the State’s own claims fail to raise a material issue for litigation in this proceeding.³² Finally, to whatever extent the State may seek to submit a new contention, it should file any such

³¹ Indeed, this section (§ G.2.3) of Appendix G is titled, “Review of Issues Related to NYS Contentions 12 and 16,” and the discussion states that Sandia’s assistance was obtained for the purpose of assessing the State’s assertions. *Id.* at G-22. The section concludes as follows (Appendix G, at G-29):

The NRC staff, with the assistance of Sandia National Laboratory, evaluated the concerns raised in NYS Contentions 12/12A/12B and 16/16A/16B. Based on this review, the staff concludes that the issues raised in these contentions do not alter the staff’s conclusions, set forth in the DSEIS, regarding the acceptability of Entergy’s SAMA analysis. Accordingly, the NRC concludes that Entergy’s use of the MACCS2 code, including the inputs and ATMOS module used to estimate offsite consequences for Indian Point, as amended in Entergy’s SAMA re-analysis, provides an acceptable methodology for use in the assessment of candidate SAMAs.

³² See, e.g., *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Unit Nos. 2 and 3), *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-08-23, 68 NRC 461, 482 (2008) (“The focus of the license proceeding must be the sufficiency of the application, not the adequacy of the Staff’s review.”).

contention when it discovers new and material information which was not available previously; it may not now "reserve" its right to file a contention in the future. Accordingly, this paragraph should be rejected in accordance with 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

8. Paragraph 8 reiterates, with minor modifications, the State's claims in Contention 12-B, ¶¶ 2-3. The Staff does not oppose the admission of this paragraph.

9. Paragraph 9 reiterates the State's claims in Contention 12-B, ¶ 4. The Staff does not oppose the admission of this paragraph.

10. Paragraph 10 reiterates the State's claims in Contention 12-B, ¶ 5. The Staff does not oppose the admission of this paragraph. The Staff opposes, however, the admission of newly-added footnote 4 to this paragraph, in which the State (a) disputes the accuracy of the FSEIS characterization of its contentions, and (b) presents an entirely new claim, whereby it asserts that "Contention 12 submits that the size of particles dispersed into the atmosphere from a severe reactor accident would be smaller than those released in nuclear weapons tests." Contention 12-C at 5 n.4; emphasis added.³³ The State's attempt to raise this new claim now should be rejected as untimely; further, the State's dispute with the accuracy of the Staff's characterization of the State's own contention fails to raise a material, concrete issue appropriate for litigation in this proceeding. Footnote 4 should therefore be rejected, in accordance with 10 C.F.R. §§ 2.309(c)(1), 2.309(f)(2), and 2.309(f)(1)(iv) and (vi).

11. Paragraph 11 reiterates the State's claims in Contention 12-B, ¶ 6. The Staff does not oppose the admission of this paragraph.

³³ Although not material to the Board's evaluation of Contention 12-C, the Staff notes that the State's claim is baseless: Nowhere in Contention 12 did the State assert that particles smaller than those involved in the nuclear weapons data should be used – and the State fails to identify any place where it had made that assertion. The Staff's description of Contention 12/12-A/12-B (here disputed by the State) correctly characterized the contention, which was premised on the *nuclear weapons test data* analyzed in the 1996 Sandia report that was cited in support of the contention. See FSEIS App. G at G-22 – G-23.

12. Paragraph 12 reiterates, with minor modifications, the State's claims in Contention 12-B, ¶ 7. The Staff does not oppose the admission of this paragraph.

13. Paragraph 13 reiterates the State's claims in Contention 12-B, ¶ 8. The Staff does not oppose the admission of this paragraph.

14. Paragraph 14 reiterates the State's claims in Contention 12-B, ¶ 9. The Staff does not oppose the admission of this paragraph.

15. Paragraph 15 reiterates, with minor modifications, the State's claims in Contention 12-B, ¶ 10 (the State adds references to the FSEIS and the word "arbitrary"). The Staff does not oppose the admission of this paragraph.

16. In the first portion of Paragraph 16, the State reiterates, with minor modifications, its claims in Contention 12-B, ¶ 11, and it cites three documents it had cited previously: (a) a May 1996 report by Sandia National Laboratories ("Sandia"); (b) an article by Beyea, Lyman, and von Hippel (2004); and a report by E. Lyman (Sept. 2004).³⁴ The Staff does not oppose the admission of those portions of Paragraph 16. In the remainder of this paragraph, however, the State cites two documents, published long ago, which it did not cite earlier: (a) a July 1987 study by the Organization for Economic Cooperation and Development ("OECD")/ Nuclear Energy Agency ("NEA"), and (b) a February 2008 conference paper by Luna, *et al.*³⁵ The State

³⁴ See Contention 12-C, at 6 ¶16, *citing* (1) SAND96-0957, D. Chanin and W. Murfin, *Site Restoration: Estimation of Attributable Costs from Plutonium-Dispersion Accidents*, Unlimited Release, UC-502, (May 1996); (2) Beyea, Lyman, von Hippel, *Damages from a Major Release of 137Cs into the Atmosphere of the United States*, *Science and Global Security*, Vol. 12 at 125-136 (2004); and (3) [E.] Lyman, *Chernobyl on the Hudson? The Health and Economic Impacts of a Terrorist Attack at the Indian Point Nuclear Power Plant*, Union of Concerned Scientists (September 2004).

³⁵ See Contention 12-C, ¶16 at 6-7, *citing* (1) CSNI 87-139, *Pathway Parameter Evaluation, A Survey Conducted by an OECD/NEA Group of Experts*, Committee on the Safety of Nuclear Installations, OECD Nuclear Energy Agency, Paris, France, July 1987 ("OECD/NEA Study"); and (2) R.E. Luna, H.R. Yoshimura, M.S. Soo Hoo, *Survey of Costs Arising from Potential Radionuclide Scattering Events*, WM2008 Conference, February 2008, Phoenix, AZ ("Survey of Costs").

acknowledges that these are “publicly available reports,”³⁶ but fails to explain why it did not cite the documents previously. As discussed *supra* at 13-14, the State’s lateness in obtaining these two documents or realizing their significance does not establish good cause for its late filing of these claims. Accordingly, the Staff opposes the admission of this portion of Paragraph 16, as untimely filed in contravention of 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

17. In Paragraph 17, the State observes that the Staff’s discussion of Contention 12/12-A/12-B in FSEIS Appendix G “refers to assistance and analysis performed by Sandia National Laboratories in this specific licensing proceeding.” Contention 12-C at 7. The State asserts that Sandia’s work is not specifically cited or listed among the references in Appendix G and has not been supplied or disclosed to the State, and the State therefore “reserves the right to submit additional contentions once the Sandia work has been identified and disclosed.” *Id.*

The Staff opposes the admission of Paragraph 17, as failing to raise a material concrete issue appropriate for litigation in this proceeding. Here, the State refers to the Staff’s evaluation of the issues raised in Contention 12/12-A/12-B. See FSEIS Appendix G, Vol. 3, § G.2.3 (“Review of Issues Related to NYS Contentions 12 and 16”), at G-22 – G-29. That discussion, prepared in the context of this litigation, does not constitute part of the Staff’s evaluation of the Applicant’s SAMA analysis; rather, it addresses, specifically, the claims made by the State in this litigation.³⁷ It is well established that claims regarding the adequacy of a Staff evaluation, as

³⁶ Contention 12-C at 16.

³⁷ Section G.2.3 indicates that the Staff obtained Sandia’s assistance for the purpose of assessing New York’s assertions in this proceeding. *Id.* at G-22. Section G.2.3 concludes as follows (*id.* at G-29):

The NRC staff, with the assistance of Sandia National Laboratory, evaluated the concerns raised in NYS Contentions 12/12A/12B and 16/16A/16B. Based on this review, the staff concludes that the issues raised in these contentions do not alter the staff’s conclusions, set forth in the DSEIS, regarding the acceptability of Entergy’s SAMA analysis. . . .

distinct from the adequacy of an applicant's LRA, fail to present an admissible contention;³⁸ even more, the State's disputation of the Staff's comments on the State's claims fails to raise a material issue for litigation. Finally, while the State may later seek to file a new contention if it discovers new and material information, it may not now "reserve" its right to do so. Accordingly, this paragraph should be rejected, pursuant to 10 C.F.R. § 2.309(f)(1)(iv) and (vi).³⁹

18. In Paragraph 18, the State asserts that "[t]he FSEIS's discussion (at G-22 – G-24) of the State's contention is inadequate incorrect and arbitrary." Contention 12-C at 7. The State's assertions in this paragraph, like its assertions on Paragraph 17 (discussed above), do not pertain to the Staff's evaluation of the Applicant's SAMA analysis but, rather, to the Staff's assessment of claims made by the State in its previous iterations of this contention. For the reasons set forth in response to Paragraph 17, *supra*, this paragraph should be rejected as failing to raise a material, concrete issue appropriate for litigation in this proceeding. Further, to whatever extent this paragraph may be construed to raise claims regarding the FSEIS's evaluation of Entergy's SAMA analysis, rather than Sandia's assessment of the State's contentions,⁴⁰ the State has not explained why it could not have made those assertions previously, in response to the DSEIS – whose evaluation of the Applicant's clean-up costs did

³⁸ See, e.g., *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Unit Nos. 2 and 3), *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-08-23, 68 NRC 461, 482 (2008) ("The focus of the license proceeding must be the sufficiency of the application, not the adequacy of the Staff's review.").

³⁹ A different question is presented by New York's claims that it should be given access to reports prepared by the Staff's consultants in preparation for litigation, such as the Sandia analyses at issue here. The Staff is reviewing its document disclosures to date, and will determine whether the analyses in question were, or should be, disclosed; the Staff will notify the State of that determination promptly.

⁴⁰ The State asserts that FSEIS "incorrectly (1) accepts and employs cost data for moderate decontamination efforts" and (2) fails to scale up the Site Restoration decontamination cost data for a high density urban area. Contention 12-C at 7, ¶18. The only support provided for these claims is the State's citation of the discussion, in Appendix G, of New York's own contentions. *Id.*

not differ substantially from the FSEIS's evaluation of such matters. The State's attempt to raise this claim now should be rejected as untimely, pursuant to 10 C.F.R. §§ 2.309(c)(1) and (f)(2).

19. Paragraph 19 presents general assertions regarding a "significant under-reporting of the [unspecified] environmental and economic costs associated with a severe accident," without specifying which costs are alleged to have been underreported; further, the paragraph fails to provide any basis for those assertions, referring only to "[t]hese [unspecified] substantial errors and omissions," and "[t]he FSEIS's [unspecified] errors." Contention 12-C at 7. This paragraph is overly vague, lacking in basis, and fails to raise a material, concrete issue appropriate for litigation in this proceeding. Accordingly, the paragraph should be rejected in accordance with 10 C.F.R. § 2.309(f)(1)(ii), (iv), and (vi). Further, the State fails to explain why it could not have made these generalized claims in its previous iterations of the contention, and its attempt to raise these new claims now should be rejected as untimely, in accordance with 10 C.F.R. §§ 2.309(c)(1) and (f)(2).

20. Paragraph 20 contains a new generalized challenge to the adequacy of the FSEIS "estimates [of] potential decontamination and clean up costs for small particle radionuclides"; further, it asserts that the FSEIS fails to satisfy "NEPA, APA, and NRC and CEQ regulations." Contention 12-C at 8. This paragraph should be excluded from the contention, for several reasons. First, it is overly vague, lacks basis and specificity, and fails to present a material concrete issue that is appropriate for litigation, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(ii), (iv), and (vi). Second, the State's claims regarding compliance with CEQ regulations fails to state a material issue that is appropriate for litigation herein, in that the NRC is not obliged to follow CEQ regulations. See discussion *supra*, at 11. Third, New York fails to explain why it could not have made any of these generalized claims (regarding the adequacy of the FEIS, and its alleged failure to comply with the APA and unspecified NRC and CEQ regulations), in its previous iterations of the contention; its attempt to raise these claims

now should be rejected as untimely, in accordance with 10 C.F.R. §§ 2.309(c)(1) and (f)(2).

21. Paragraph 21 contains a generalized assertion that “while the FSEIS acknowledges the existence of . . . concerns” about decontamination costs expressed by New York and the State of Connecticut, it fails to “address those concerns in a meaningful manner in violation of NRC and CEQ regulations.” Contention 12-C at 8. This paragraph should be excluded from the contention. First, the paragraph fails to specify any portion of the FSEIS that is inadequate, whether in Chapter 5, Appendix G, or Appendix A (in which the Staff addresses public comments concerning the DSEIS). Further, New York fails to identify any manner in which the Staff’s discussion of the State’s or Connecticut’s concerns is inadequate. Accordingly, this paragraph is overly vague, lacks basis and specificity, and fails to present a material concrete issue that is appropriate for litigation, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(ii), (iv), and (vi). Second, the State’s claims regarding compliance with CEQ regulations fails to state a material issue that is appropriate for litigation herein, in that the NRC is not obliged to follow CEQ regulations. See discussion *supra*, at 11.

22. Paragraph 22 “incorporates the supporting evidence” for Contention 12/12A/12B. Inasmuch as the Board has previously admitted those contentions, the Staff does not oppose the admission of this paragraph, to the extent that the cited matters were admitted previously.

23. Paragraph 23 claims that the FSEIS relies upon “the outdated decontamination cost figure contained in the MACCS2 code,” and that the “FSEIS and the December 2009 SAMA Reanalysis for IP2 and IP3 should have incorporated the analytical framework contained in the 1996 [Sandia] report concerning site restoration costs, as well as [unspecified] recent studies examining the cost consequences in the New York metropolitan area.” Contention 12-C at 8-9. In support of this claim, the State cites and relies exclusively upon Dr. Chanin’s February 2011 report. See *id.* at 8. The Staff opposes the admission of this paragraph. Although Dr. Chanin issued his report in February 2011 (following the Staff’s issuance of the

FSEIS), New York does not explain why it could not have asked him to prepare that report to support its contentions on the Staff's DSEIS, the Applicant's ER, or the Applicant's December 2009 SAMA Reanalysis – which the State explicitly challenges in this paragraph. As discussed *supra* at 13-14, the State's lateness in obtaining Dr. Chanin's report does not establish good cause for its late filing of these claims. Further, while Paragraph 23 claims that the FSEIS and Entergy's December 2009 SAMA Reanalysis rely upon an "outdated decontamination cost figure contained in the MACCS2 code," and "should have incorporated the analytical framework" contained in Sandia's 1996 report, the State does not show that the treatment of these matters in the FSEIS is any different from the treatment provided in the DSEIS. This paragraph should therefore be rejected as untimely, in accordance with 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

24. In Paragraph 24, the State cites two reports that are discussed in the Chanin report: The July 1987 OECD/NEA study and the February 2008 Survey of Costs by Luna, *et al.*. The State claims that these reports provide "further support [for] the State's position." Contention 12-C at 9.⁴¹ As discussed *supra* at 16-17, these reports were published in 1987 and 2008; the State acknowledges that the documents are "publicly available reports,"⁴² but does not explain why it did not cite these documents previously, with respect to the ER, the DSEIS, or the SAMA Reanalysis. Further, as discussed *supra* at 13-14, the State's lateness in obtaining these documents does not establish good cause for its late filing of these claims. Accordingly, this paragraph should be rejected as untimely, pursuant to 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

25. In Paragraph 25, the State reiterates its reliance on two documents which it had also relied upon in previous iterations of this contention: (a) the 2004 article by Beyea, Lyman,

⁴¹ See discussion *supra*, at 16-17, regarding Contention 12-C, ¶16.

⁴² See Contention 12-C at 16.

and von Hippel, and (b) the Lyman article published in September 2004.⁴³ This paragraph offers nothing beyond the State's reference to these documents in Paragraph 16. The Staff therefore opposes the admission of this paragraph as redundant and unnecessary.

26. Paragraph 26 presents a generalized assertion that "these [unspecified] publicly available reports should be used to determine the present and future value of decontamination costs" for counties within the 10-mile EPZ and towns and cities within the 50-mile EPZ. Contention 12-C at 9. This paragraph should be excluded. First, the paragraph fails to specify any portion of the FSEIS that is inadequate; second, it fails to identify which of the "publicly available reports" it refers to here, *i.e.*, those it had previously cited or those which it now cites for the first time in Contention 12-C; third, it raises an issue concerning "present and future value[s]," but fails to indicate any manner in which the FSEIS's treatment of this matter differs from the treatment contained in the ER, DSEIS, or SAMA Reanalysis.⁴⁴ Accordingly, this paragraph is overly vague, lacks basis and specificity, and fails to present a material concrete issue that is appropriate for litigation, contrary to 10 C.F.R. § 2.309(f)(1)(ii), (iv), and (vi). Further, it should be rejected as untimely, pursuant to 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

27. Paragraph 27 asserts that the 1996 Sandia study (SAND96-0957) contains "methodology and conclusions on estimating decontamination costs [that] are directly useful to the License Renewal Application." Contention 12-C at 9-10.⁴⁵ This paragraph should be rejected. First, the paragraph fails to specify any portion of the FSEIS that is inadequate; accordingly, the paragraph is overly vague, lacks basis and specificity, and fails to present a

⁴³ See discussion *supra* at 16-17, regarding Contention 12-C, ¶16.

⁴⁴ Contention 12-B, filed on March 11, 2010, also contained assertions regarding the need for present and future value calculations, See Contention 12-B at 6 ¶1 19.

⁴⁵ See discussion *supra*, at 16-17, regarding Contention 12-C, ¶16.

material concrete issue that is appropriate for litigation, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(ii), (iv), and (vi). Second, the 1996 Sandia report was published 15 years ago, and was cited previously by the State in its earlier iterations of this contention. The State does not explain why it did not include these assertions concerning the Sandia study in its three previous iterations of this contention, challenging the ER, the DSEIS, or the December 2009 SAMA Reanalysis. Accordingly, Paragraph 27 should be rejected as untimely filed, in contravention of the requirements of 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

28. Paragraph 28, like Paragraph 27 discussed above, cites the 1996 Sandia study (SAND96-0957) in support of its claims concerning the costs of decontamination and clean-up of small particulates in an urban area. See Contention 12-C at 10. This paragraph should be rejected for the reasons stated in response to Paragraph 27, *supra*.

29. Paragraph 29, like Paragraphs 27 and 28, cites the 1996 Sandia study (SAND96-0957) in support of its claims concerning the use of nuclear weapons explosions data to estimate the decontamination costs of a severe reactor accident. See Contention 12-C at 10. This paragraph should be rejected for the reasons stated in response to Paragraph 27, *supra*.

30. Paragraph 30, like Paragraphs 27- 29 discussed above, cites the 1996 Sandia study (SAND96-0957) in support of its claims concerning decontamination costs in an urban area following a severe reactor accident. See Contention 12-C at 10-11. This paragraph should be rejected for the reasons stated in response to Paragraph 27, *supra*.

31. Paragraph 31, like Paragraph 30 discussed above, cites the 1996 Sandia study (SAND96-0957) in support of its claims concerning decontamination costs in an urban area following a severe reactor accident. See Contention 12-C at 11. This paragraph should be rejected for the reasons stated in response to Paragraph 27, *supra*.

32. Paragraph 32 asserts that the 1996 Sandia study (SAND96-0957) understates the population densities and property values present in "many areas within the Indian Point

[EPZ],” and asserts that the “FSEIS should revise the Sandia results” accordingly. Contention 12-C at 11. New York does not specify which portion of the FSEIS is claimed to be deficient, and does not take issue with any of the cost values accepted in the FSEIS; in fact, this portion of the contention (like Paragraphs 17-18) appears to challenge the Appendix G discussion of New York’s claims regarding the 1996 Sandia study, rather than the Staff’s evaluation of the Applicant’s SAMA analysis. For the reasons set forth in response to Paragraphs 17-18, *supra*, this paragraph should be rejected as failing to raise a material, concrete issue appropriate for litigation in this proceeding, contrary to 10 C.F.R. §§ 2.309(f)(1)(ii), (iv), and (vi). Further, the State does not explain why it did not include these assertions concerning the 1996 Sandia study in its three previous iterations of this contention; accordingly, Paragraph 32 should be rejected as untimely filed, in contravention of 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

33 – 38. In these six paragraphs, New York presents a detailed challenge to the FSEIS, based entirely upon a conference paper presented by Luna, *et al.* in February 2008.⁴⁶ The State acknowledges that this document is a “publicly available report,”⁴⁷ but fails to explain why it did not make these claims or cite this document previously. As discussed *supra* at 13-14 and 16, the State’s lateness in obtaining these documents or realizing their significance does not establish good cause for its late filing of these claims. Accordingly, the Staff opposes the admission of these paragraphs in their entirety as untimely filed, pursuant to 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

39. In Paragraph 39, the State cites the 1996 Sandia report (SAND96-0957) and the

⁴⁶ See Contention 12-C at 7 and 12-14, *citing* R.E. Luna, H.R. Yoshimura, M.S. Soo Hoo, *Survey of Costs Arising from Potential Radionuclide Scattering Events*, WM2008 Conference, February 2008.

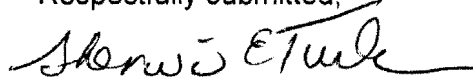
⁴⁷ Contention 12-C at 16.

1987 OECD/NEA study, as well as a 1975 study that was quoted in the 1996 Sandia report,⁴⁸ in support of its claims regarding decontamination and disposal costs for a "decontamination factor greater than 10." Contention 12-C at 14-15. While the State recognizes that these documents are publicly available (see Contention 12-C at 16), it fails to explain why it did not make these claims or cite these documents previously. Further, as discussed *supra* at 14 and 16, the State's lateness in obtaining documents or realizing their significance does not establish good cause for its late filing of these claims. Accordingly, the Staff opposes the admission of Paragraph 39 as untimely filed, pursuant to 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2).

CONCLUSION

For the foregoing reasons, the Staff does not oppose the admission of Contention 12-C, in part, insofar as it seeks to apply previously admitted Contention 12/12-A/12-B to the FSEIS. In all other respects, however, Contention 12-C and its supporting bases should be rejected for the reasons set forth above.

Respectfully submitted,



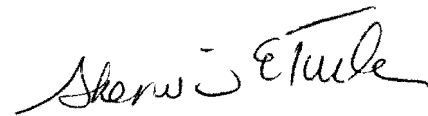
Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of March 2011

⁴⁸ Contention 12-C at 15, *citing* "Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants," NUREG-75/014 (WASH-1400) (1975).

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 parties, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.

A handwritten signature in black ink, appearing to read "Sherwin E. Turk". The signature is written in a cursive style with a large, sweeping initial "S".

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of March 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO STATE OF NEW YORK CONTENTION 12-C CONCERNING THE FINAL SEIS EVALUATION OF DECONTAMINATION AND CLEAN UP COSTS IN A SEVERE ACCIDENT," dated March 7, 2011, 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 7th day of March, 2011:

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