

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

December 6, 2011

ORDER

(Granting Entergy's Motion for Clarification of Licensing Board
Memorandum and Order Admitting Contention NYS-38/RK-TC-5)

On November 10, 2011, we admitted Contention NYS-38/RK-TC-5, arising out of the issuance of Supplement 1 to the NRC Staff's Safety Evaluation Report (SSER) for Applicant Entergy Nuclear Operations, Inc.'s (Entergy's) License Renewal Application for Indian Point Units 2 and 3.¹ NYS-38/RK-TC-5 challenges the adequacy of Entergy's Aging Management Plans (AMPs) for several safety-related systems and components in light of these AMPs' commitment to the future development of certain AMPs rather than presenting existing plans for review.²

On November 21, 2011, Entergy moved for "clarification regarding the scope of NYS-38/RK-TC-5 insofar as it pertains to managing the potential aging effect of primary water stress corrosion cracking ('PWSCC') in steam generator divider plate assemblies," as well as clarification regarding the schedule for filing evidentiary submissions on the newly admitted

¹ Licensing Board Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) (Nov. 10, 2011) (unpublished) [hereinafter NYS-38/RK-TC-5 Admissibility Order].

² Id. at 2.

contention.³ Intervenors the State of New York and Riverkeeper, Inc. (collectively, Intervenors) filed a Joint Response.⁴ To the extent explained below, we grant Entergy's Motion for Clarification of our November 10, 2011 Memorandum and Order.

I. SCOPE OF CONTENTION

Entergy first requests clarification regarding the scope of NYS-38/RK-TC-5 as it relates to managing the potential aging effect of PWSCC in steam generator divider plate assemblies.⁵ Entergy "seeks confirmation that the new contention is limited to the adequacy of Commitment 41 as an additional action that Entergy will take to address a specific issue raised by the Staff as a result of recent foreign operating experience."⁶ Intervenors respond that the Motion for Clarification is a thinly guised attempt to restrict NYS-38/RK-TC-5, which Entergy failed to do in its arguments against the contention's admission.⁷

We grant Entergy's Motion and clarify our decision as follows. NYS-38/RK-TC-5 is a broadly worded contention questioning whether Entergy "has a program that will manage the affects of aging of several critical components or systems" and whether the proffered programs provide an adequate "record and rational basis [to the NRC] upon which it can determine whether to grant a renewed license to Entergy."⁸ Our November 10, 2011 Memorandum and Order observed that "[i]n support of this contention, the Intervenors claim that Entergy's AMPs are inadequate with regard to several safety-related systems and components because these

³ Applicant's Motion for Clarification of Licensing Board Memorandum and Order Admitting Contention NYS-38/RK-TC-5 (Nov. 21, 2011) at 1-4 [hereinafter Entergy Motion for Clarification].

⁴ State of New York and Riverkeeper's Joint Response to Entergy's Motion for Clarification About Contention NYS-38/RK-TC-5 (Dec. 1, 2011) [hereinafter Intervenors Response].

⁵ Id. at 2.

⁶ Id.

⁷ Intervenors Response at 2.

⁸ NYS-38/RK-TC-5 Admissibility Order at 2.

AMPs merely commit to the future development of certain AMPs, rather than presenting existing plans for current review.”⁹ And we noted that, “[a]s bases, the Intervenor highlight[ed] several programs that, they assert[ed], Entergy plans to develop after its license would be renewed.”¹⁰

Our November 10, 2011 Memorandum and Order admitted the Intervenor’s broad allegations. We stated that “[t]he Intervenor have broadly contended, relying on multiple bases, that Entergy’s new commitments do not meet NRC regulations for having a program that will adequately manage the effects of aging during the period of extended operations.”¹¹ We further stated that “Intervenor, relying on their experts, claim that there is insufficient information in Entergy’s recent commitments . . . to determine whether it has an adequate AMP. Whether the Intervenor and their experts are correct is an issue to be determined on the merits at an evidentiary hearing.”¹²

We agree with the Intervenor. The language of our November 10, 2011 Memorandum and Order did not limit NYS-38/RK-TC-5 solely to Commitment 41. Rather, in finding NYS-38/RK-TC-5 admissible, we admitted the Intervenor’s “broad” contention, which relied on “multiple bases” including the “claim that there is insufficient information in Entergy’s recent commitments” that were addressed in the SSER.

⁹ Id.

¹⁰ Id. at 3.

¹¹ Id. at 10 (emphasis added).

¹² Id. at 11-12 (emphasis added).

II. TIMING OF EVIDENTIARY SUBMISSIONS RELATED TO NYS-38/RK-TC-5

Entergy seeks confirmation that any evidentiary filings on NYS-38/RK-TC-5 are to be submitted in accordance with our November 17, 2011 Amended Scheduling Order.¹³

Intervenors contest this deadline, arguing that there have yet to be adequate mandatory disclosures for NYS-38/RK-TC-5.¹⁴ Our November 17, 2011 Amended Scheduling Order extended the deadline for Intervenors to submit written statements of position, written direct testimony with supporting affidavits, and exhibits to December 22, 2011.¹⁵ The deadline for Entergy and the NRC Staff to file motions in limine and motions to strike relating to these submissions was extended to January 30, 2012, and the deadline for these parties to file written statements of position, written direct testimony with supporting affidavits, and exhibits was extended to February 29, 2012.¹⁶

In light of these facts, this issue will be best resolved by status conference, as suggested by our October 7, 2011 Order.¹⁷ We will address this issue in a status conference to be held today.

¹³ Entergy Motion for Clarification at 3.

¹⁴ Intervenors Response at 8.

¹⁵ Licensing Board Order (Granting Unopposed Motion by the State of New York and Riverkeeper, Inc. to Amend the Scheduling Order) (Nov. 17, 2011) at 1 (unpublished).

¹⁶ Id.

¹⁷ See Licensing Board Order (Denying New York's Motion for an Extension of Time) (Oct. 7, 2011) at 5 n.17 (unpublished).

III. TIMING OF RELATED EVIDENTIARY SUBMISSIONS

Entergy asks for confirmation that any evidentiary filings addressing (1) the identification of the most limiting locations for environmentally-assisted metal fatigue evaluations, (2) the nature of user intervention permitted by the WESTEMS computer code, and (3) Entergy's reliance on guidance in Electric Power Research Institute report Materials Reliability Program-227, "Pressurized Water Reactor Internals Inspection and Evaluation Guidelines," should be filed with the evidence for NYS-25 and NYS-26B/RK-TC-1B, rather than with the evidence for NYS-38/RK-TC-5, to avoid duplicative filings.¹⁸ Entergy also calls for confirmation that these filings are expected to follow the schedule outlined in our November 17, 2011 Order.¹⁹

NYS-38/RK-TC-5 stands as an independent contention and has not been consolidated with NYS-25 or NYS-26B/RK-TC-1B. While some of the issues raised across these contentions might overlap, many do not, and thus we find consolidation of these contentions inappropriate. To the extent that such evidence is identical, parties should first file evidence as it relates to either NYS-25 and NYS-26B/RK-TC-1B and, if relevant, reference those filings in their NYS-38/RK-TC-5 materials.²⁰ Our October 7, 2011 Order regarding Procedures for Evidentiary Filings dictates that "[o]nly one copy of each document should be offered into evidence as an exhibit."²¹ Thus, if an exhibit is offered into evidence relating to NYS-25, no party or parties should re-introduce the same piece of evidence, unaltered, with its NYS-26B/RK-TC-1B or NYS-38/RK-TC-5 materials. Rather, the party or parties should refer to the exhibit number used in the NYS-25 filing. However, if NYS-26B/RK-TC-1B or NYS-38/RK-TC-5 calls for introduction of

¹⁸ Entergy Motion for Clarification at 4.

¹⁹ Id.

²⁰ Licensing Board Order (Procedures for Evidentiary Filings) (Oct. 7, 2011) at 3 (unpublished).

²¹ Id. at 3.

a “separate” or altered portion of the same exhibit as another contention, the party introducing it shall submit it as a separate exhibit.²²

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 6, 2011

²² See id. (“If participants rely on different portions of the same exhibit, they shall submit separate portions as separate exhibits.”).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Granting Entergy's Motion For Clarification of Licensing Board Memorandum and Order Admitting Contention NYS-38/RK-TC-5) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 6th day of December 2011