

July 2, 2012

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 FIFTH STATUS REPORT
IN RESPONSE TO THE ATOMIC SAFETY AND
LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012

In accordance with the Atomic Safety and Licensing Board's ("Board") "Order (Granting NRC Staff's Unopposed Time Extension Motion and Directing Filing of Status Updates)" ("Order"), issued on February 16, 2012, the NRC Staff ("Staff") herewith provides its fifth monthly status report to the Board. As directed by the Board, the Staff provides the following information:

1. As the Staff has stated previously,¹ on February 17, 2012, the Staff received additional information from Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") concerning its Reactor Vessel Internals ("RVI") Aging Management Program and Inspection Plan.² In light of that transmittal, on May 15, 2012, the Staff issued requests for additional

¹ See "NRC Staff's Fourth Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (June 1, 2012) ("Fourth Report"), at 1-2.

² Letter from Fred Dacimo, Vice President, Operations License Renewal to NRC Document Control Desk, Subject: "License Renewal Application - Revised Reactor Vessel Internals Program and Inspection Plan Compliant with MRP-227-A, Indian Point Nuclear Generating Unit Nos. 2 and 3" (NL-12-037) (Feb. 17, 2012) (ADAMS Accession No. ML12060A312).

information (“RAIs”) to Entergy concerning its RVI program.³ The Applicant submitted its initial response to those RAIs on June 14, 2012.⁴ As stated in the Staff’s response to the Board’s Order of June 7, 2012, Entergy’s submittal constituted a partial response to the Staff’s RAIs; Entergy stated that it will submit its complete responses by September 28, 2012.⁵

2. Assuming that Entergy’s further responses of September 28, 2012, are complete and do not require supplementation or trigger the issuance of any additional RAIs, the Staff presently expects to complete its review of Entergy’s RVI Program and to issue a Supplement to the Safety Evaluation Report (“SER”) on or about December 28, 2012 (*i.e.*, approximately three months after receipt of Entergy’s September 28 RAI responses).⁶ If Entergy’s further responses of September 28, 2012 are incomplete or require the Staff to issue additional RAIs, the SER Supplement will be deferred to await completion of the Staff’s review. The Staff will provide further information to the Board concerning this matter as the Staff’s review progresses. These matters affect the litigation of Contention NYS-25 (Reactor Vessel Internals) and related portions of Contention NYS-38/ RK-TC-5, but do not affect the litigation of any other contention.

3. On June 26, 2012, the Staff issued a draft Supplement to the Final Supplemental Environmental Impact Statement (“FSEIS”) for license renewal of Indian Point Units 2 and 3 (“IP2” and “IP3”).⁷ The draft FSEIS Supplement addresses new information the Staff received

³ Letter from Robert F. Kuntz (NRC) to Vice President, Operations (Entergy), Subject: “Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (“IP2” and “IP3”), License Renewal Application” (May 15, 2012) (ADAMS Accession No. ML12125A342).

⁴ Letter from Fred Dacimo (Entergy) to NRC Document Control Desk (June 14, 2012) (Subject: Reply to Request for Additional Information Regarding the License Renewal Application, (NL-12-089) (“Initial RAI Response”).

⁵ See “NRC Staff’s Statement in Response to the Atomic Safety and Licensing Board’s Order of June 7, 2012” (June 18, 2012), at 7-8.

⁶ See *id.* at 8 n.19.

⁷ See Letter from Sherwin E. Turk to the Board (June 26, 2012) (providing an electronic copy of the FSEIS Supplement (ADAMS Accession No. ML12174A244) and the Staff’s letter of transmittal to the U.S. Environmental Protection Agency (ADAMS Accession No. ML12159A495).

concerning entrainment, impingement, the thermal effects of once-through cooling, and a Biological Opinion issued by the National Marine Fisheries Service (“NMFS”) regarding shortnose sturgeon; it also discusses the Staff’s reinitiation of consultations with NMFS regarding Atlantic sturgeon (listed as an endangered species in February 2012). Comments on the draft FSEIS Supplement are due on August 20, 2012, and the final FSEIS Supplement is expected to be issued in or about December 2012. Inasmuch as the draft FSEIS Supplement addresses aquatic impacts only, it does not affect the litigation of any admitted contention in this proceeding other than Riverkeeper Contention EC-8 (Endangered Species).

4. As the Staff stated previously, the Staff has issued a Biological Assessment and has reinitiated consultations with NMFS under Section 7 of the Endangered Species Act (“ESA”), regarding Atlantic sturgeon at IP2/IP3.⁸ The Staff presently expects to conclude these consultations by August 14, 2012, and to receive NMFS’s Biological Opinion by September 28, 2012. The Staff will inform the Board if there is any change to these projected dates.

5. On June 19, 2012, the State of New York and Riverkeeper, Inc. (collectively, “Intervenors”) filed their direct testimony, statement of position and exhibits on Contention NYS-38/RK-TC-5. In accordance with the Board’s Order of April 23, 2012,⁹ the Staff and Applicant are scheduled to file their direct and rebuttal testimony on this contention on July 19, 2012. The Staff has determined that it will need a limited extension of time to file its evidentiary submissions on this contention, and has initiated consultations with the parties concerning this matter.¹⁰ The Staff expects to file its motion within the next several days. Hearings have not

⁸ See Letter from Sherwin E. Turk to the Board (May 17, 2012), attaching letter from Jeremy J. Susco (NRC) to Patricia A. Kurkul (NMFS) (May 16, 2012 (ADAMS Accession No. ML12100A082).

⁹ “Order (Denying NRC Staff’s Motion for Partial Reconsideration and State of New York/Riverkeeper’s Cross-Motion to NRC Staff’s Motion for Reconsideration)” (April 23, 2012), at 7.

¹⁰ The Staff and/or Applicant may also seek to file a motion in limine to strike certain portions of the Intervenors’ filings on Contention NYS-38/RK-TC-5.

yet been scheduled on Contention NYS-38/RK-TC5, and the filing of a motion for extension of time concerning this contention will not affect the litigation of any contention currently scheduled for hearing in October - December 2012.

6. On June 8, 2012, the U.S. Court of Appeals for the D.C. Circuit issued its decision in *State of New York v. NRC* (Docket No. 11-1045) (D.C. Cir., June 8, 2012), in which the court vacated the Commission's Waste Confidence Decision Update and Temporary Storage Rule and remanded those rulemakings to the NRC.¹¹ Although contentions related to the impacts of waste storage and/or disposal were previously filed in this proceeding, none of the currently admitted contentions are affected by the court's decision. The Staff is unable to state at this time whether the court's decision will affect future litigation in this proceeding.

7. As discussed in the Board's "Order (Scheduling July 9, 2012, Status Conference)" (June 29, 2012) ("Order"), Riverkeeper, Inc. ("Riverkeeper") has filed a motion to defer the filing of its rebuttal testimony on Contention RK-EC-3/CW-EC-1 and to hold that contention in abeyance for an indefinite time, pending the outcome of its settlement discussions with the Applicant concerning the contention. On June 28, 2012, Entergy filed a response in opposition to Riverkeeper's motion; in accordance with the Board's Order, the Staff intends to file a response in opposition to Riverkeeper's motion on or before July 6, 2012. The Board has temporarily suspended the date for Riverkeeper's filing of rebuttal testimony and has scheduled this motion for discussion during a prehearing conference to be held on July 9, 2012. If granted, Riverkeeper's motion would delay hearings and resolution of this contention, for an indefinite time.

¹¹ *New York v. NRC*, slip op. at 21 (citing Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010), and Final Rule, "Consideration of Environmental Impacts of Temporary Storage of Spent Fuel after Cessation of Reactor Operation," 75 Fed. Reg. 81,032 (Dec. 23, 2010)).

8. Apart from Riverkeeper's pending motion to defer the filing of its rebuttal testimony on Contention RK-EC-3/CW-EC-1 and to hold that contention in abeyance for an unspecified period of time, the Staff does not expect that any of the matters discussed above will affect the litigation of any issues presently scheduled for hearing in October – December 2012; further, the Staff is not currently aware of any other matter that has the potential to further delay this proceeding. In accordance with the Board's direction (Order, at 2), the Staff will notify the Board as soon as any other event with potential to alter the hearing schedule arises.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 2nd day of July, 2012

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In the Matter of)
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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 foregoing "NRC STAFF'S FIFTH STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated July 2, 2012, in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 2nd day of July, 2012.

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