

August 1, 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 SIXTH 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 sixth monthly status report to the Board. As directed by the Board, the Staff provides the following information:

1. In the Staff's Fifth Status Report,¹ the Staff discussed (a) the additional information it had received from Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), concerning its Reactor Vessel Internals ("RVI") Aging Management Program and Inspection Plan,² (b) the Staff's May 15, 2012 transmittal to the Applicant of certain requests for additional

¹ See "NRC Staff's Fifth Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (July 2, 2012) ("Fifth Status 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”) concerning that program,³ and (c) the Applicant’s initial partial response to those RAIs, dated June 14, 2012.⁴ The Staff has completed an initial review of the Applicant’s initial partial RAI response, and has identified the need for additional information. The Staff has drafted supplemental RAIs concerning this matter and expects to issue them shortly.

2. As stated in the Staff’s Fifth Status Report,⁵ Entergy’s RAI initial partial RAI response of June 14, 2012 indicated that Entergy will submit its complete responses to the RAIs by September 28, 2012. To the best of the Staff’s knowledge, information and belief, this information continues to be correct. In addition, in its Fifth Status Report, the Staff stated:

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 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.⁶

These statements continue to reflect the Staff’s view of these matters.

3. As further stated in the Staff’s Fifth Status Report,⁷ public comments are due to be submitted on or before August 20, 2012, concerning the Staff’s draft Supplement to the Final

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”) (ADAMS Accession No. ML12184A037).

⁵ Fifth Status Report, at 2 ¶ 1.

⁶ *Id.* at 2, ¶ 2; footnotes omitted.

⁷ *Id.* at 2-3, ¶ 3.

Supplemental Environmental Impact Statement (“FSEIS”) for license renewal of Indian Point Units 2 and 3 (“IP2” and “IP3”) (addressing new information on entrainment, impingement, the thermal effects of once-through cooling, shortnose sturgeon, and Atlantic sturgeon consultations). The Staff continues to expect the final FSEIS Supplement to be issued in or about December 2012, although this projected date could change if warranted by the public comments or other developments. 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 also stated previously,⁸ the Staff has issued a Biological Assessment and has reinitiated consultations with the National Marine Fisheries Service (“NMFS”) under Section 7 of the Endangered Species Act (“ESA”), regarding Atlantic sturgeon at IP2/IP3.⁹ On July 23, 2012, the Applicant submitted additional information to NMFS concerning Atlantic sturgeon at Indian Point. The Staff had previously indicated that it expects consultations to conclude by August 14, 2012, and to receive NMFS’s Biological Opinion by September 28, 2012; the Staff does not yet know whether the Applicant’s recent submittal of information will affect the expected dates for completion of consultations or issuance of the Biological Opinion. The Staff will inform the Board if there is any change to these dates.

5. As stated previously, 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-5.¹⁰ In accordance with the Board’s Order of July 12, 2012,¹¹ the

⁸ See *id.*, at 3 ¶ 4.

⁹ 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)).

¹⁰ Fifth Status Report, at 3-4 ¶ 5.

¹¹ “Order (Memorializing Items Discussed During the July 9, 2012, Status Conference)” (July 12, 2012), at 2.

Staff and Applicant are scheduled to file their direct and rebuttal testimony on this contention on August 20, 2012. Hearings have not yet been scheduled on Contention NYS-38/RK-TC5, and the filing of this testimony will not affect the litigation of any contention currently scheduled for hearing in October - December 2012.

6. As stated previously,¹² 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.¹³ Two contentions related to waste storage and/or disposal were subsequently filed by the Intervenors in this proceeding; answers to those contentions are due to be filed on August 2 and August 3, 2012, respectively. This matter does not affect the schedule for evidentiary hearings on Track 1 contentions; the Staff is unable to state at this time, however, whether (or if so, how) the court's decision and the Intervenors' filing of these contentions will affect future litigation in this proceeding.

7. On July 24, 2012, the Applicant filed an amendment to its license renewal application ("LRA"), revising the discussion in the LRA's Environmental Report of the Coastal Zone Management Act ("CZMA") consistency determination for license renewal of IP2/IP3.¹⁴ On July 30, 2012, the Applicant filed a motion seeking issuance of a Declaratory Order that it has already obtained the required New York State Coastal Management Program consistency

¹² Fifth Status Report, at 4 ¶ 6.

¹³ *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)).

¹⁴ Letter from Fred Dacimo (Entergy) to NRC Document Control Desk (July 24, 2012) (Subject: Supplement to License Renewal Application – Compliance with Coastal Zone Management Act" (NL-12-107) (ADAMS Accession No. ML12207A122)).

review for license renewal of IP2/IP3.¹⁵ Under 10 C.F.R. § 2.323(c), answers to the Applicant's motion are due on August 9, 2012. The parties have held preliminary discussions regarding a possible extension of time for the filing of answers to the Applicant's motion; the Staff expects that a motion for extension of time for such answers will be filed shortly by the Staff, the State of New York, and/or other parties. In addition to preparing to respond to the Applicant's motion, the Staff is presently conducting a review of the Applicant's LRA revision. The Staff is unable to state at this time whether (or if so, how) the Applicant's submittal will affect this proceeding; this matter, however, does not affect the schedule for evidentiary hearings on Track 1 contentions.

8. To the best of the Staff's knowledge, information and belief, none of the matters discussed above have any impact on the hearings on Track 1 contentions, scheduled to commence in October 2012. Further, the Staff is not currently aware of any other matter that has the potential to impact 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/

Sherwin E. Turk
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 415-1533
E-mail: sherwin.turk@nrc.gov

Dated at Rockville, Maryland
this 1st day of August, 2012

¹⁵ "Motion and Memorandum by [Entergy] for Declaratory Order that It Has Already Obtained the Required New York State Coastal Management Program Consistency Review of [IP2 and IP3] for Renewal of the Operating Licenses" (July 30, 2012).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S SIXTH STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated August 1, 2012, in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 1st day of August, 2012.

Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Lawrence.McDade@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
E-mail: OCAAMAIL.resource@nrc.gov

Dr. Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Richard.Wardwell@nrc.gov

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Hearing.Docket@nrc.gov

Dr. Michael F. Kennedy
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Michael.Kennedy@nrc.gov

Anne Siarnacki, Esq.
Shelbie Lewman, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U. S, Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: shelbie.lewman@nrc.gov
E-mail: Anne.Siarnacki@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan, Esq.
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
E-mail: MJR1@westchestergov.com

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Jonathan Rund, Esq.
Raphael Kuyler, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com
E-mail: jrund@morganlewis.com
E-mail: rkuyler@morganlewis.com

John J. Sipos, Esq.
Charlie Donaldson, Esq.
Assistants Attorney General
New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, NY 12224
E-mail: John.Sipos@ag.ny.gov

Martin J. O'Neill, Esq.
Morgan, Lewis & Bockius, LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
E-mail: martin.o'neill@morganlewis.com

Janice A. Dean, Esq.
Assistant Attorney General,
Office of the Attorney General
of the State of New York
120 Broadway, 25th Floor
New York, NY 10271
E-mail: Janice.Dean@ag.ny.gov

Elise N. Zoli, Esq.
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, MA 02109
E-mail: ezoli@goodwinprocter.com

Joan Leary Matthews, Esq.
Senior Attorney for Special Projects
New York State Department of
Environmental Conservation
Office of the General Counsel
625 Broadway, 14th Floor
Albany, NY 12233-1500
E-mail: [jmatthe@gw.dec.state.ny.us](mailto:jlmatthe@gw.dec.state.ny.us)

William C. Dennis, Esq.
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
E-mail: wdennis@entergy.com

John Louis Parker, Esq.
Office of General Counsel, Region 3
New York State Department of
Environmental Conservation
21 South Putt Corners Road
New Paltz, NY 12561-1620
E-mail: jlparker@gw.dec.state.ny.us

Daniel E. O'Neill, Mayor
James Seirmarco, M.S.
Village of Buchanan
Municipal Building
Buchanan, NY 10511-1298
E-mail: vob@bestweb.net
E-mail: smurray@villageofbuchanan.com

Robert Snook, Esq.
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
E-mail: robert.snook@ct.gov

Phillip Musegaas, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
E-mail: phillip@riverkeeper.org
E-mail: dbrancato@riverkeeper.org

Manna Jo Greene
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Avenue
Beacon, NY 12508
E-mail: mannajo@clearwater.org
E-mail: karla@clearwater.org

Daniel Riesel, Esq.
Thomas F. Wood, Esq.
Victoria Shiah, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
E-mail: driese@sprlaw.com
E-mail: vshiah@sprlaw.com

Michael J. Delaney, Esq.
Director, Energy Regulatory Affairs
New York City Department of Environmental
Protection
59-17 Junction Boulevard
Flushing, NY 11373
E-mail: mdelaney@dep.nyc.gov

/Signed (electronically) by/

Sherwin E. Turk
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 415-1533
E-mail: sherwin.turk@nrc.gov