

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	
	March 20, 2013

**ENTERGY’S UNOPPOSED MOTION FOR LEAVE TO FILE, AND
REQUEST THE ADMISSION OF, TWO NEW HEARING EXHIBITS
RELATED TO CONTENTION NYS-5 (BURIED PIPING)**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(a), and the Atomic Safety and Licensing Board’s (“Board”) direction during the December 13, 2012 evidentiary hearing, Entergy Nuclear Operations, Inc. requests leave to file two additional hearing exhibits, ENT000606 and ENT000607. In addition, Entergy is filing a revised exhibit list (ENTR12001) that reflects the submission of these additional exhibits. Pursuant to 10 C.F.R. § 2.323(b), counsel for Entergy consulted with counsel for New York State (“New York”) and the Nuclear Regulatory Commission (“NRC”) Staff by telephone on March 15 and 19, 2013. Neither New York nor the NRC Staff opposes Entergy’s Motion.¹

Entergy respectfully requests that the Board admit ENT000606 and ENT000607 into evidence. As explained below, good cause exists for the submittal of these exhibits and their admission into evidence. Also, the Board’s admission of these exhibits will not result in harm to any other party, will not cause any delay in the proceeding, and is otherwise in the public

¹ NRC Staff counsel stated that the Staff does not oppose Entergy’s Motion, subject to the understanding that the Staff reserves the right to make any necessary updates or corrections to its testimony that may arise from Entergy’s submittal of Proposed Exhibits ENT000606 and ENT000607.

interest.² As Entergy counsel explained in a Board Notification filed on March 15, 2013,³ Proposed Exhibit ENT000606 (Entergy letter NL-13-037, dated March 5, 2013) updates a March 28, 2011 Entergy letter (NL-11-032) that the Board previously admitted into evidence as Exhibit NYS000151 in connection with Contention NYS-5 (Buried Piping).⁴ ENT000606 also affects, to a limited extent, statements made by Entergy's witnesses in their written and oral hearing testimony on Contention NYS-5. Therefore, Proposed Exhibit ENT000607, which is a Joint Declaration by the Entergy witnesses who proffered the affected testimony, updates Entergy's prefiled and oral testimony to be consistent with Proposed Exhibit ENT000606 (NL-13-037).

II. ARGUMENT

The Board has indicated that, to the extent relevant documents are identified prior to the closure of the hearing record, such documents may be proffered as new exhibits.⁵ As set forth below, Proposed Exhibits ENT000606 and ENT000607 are relevant to issues raised in Contention NYS-5 and discussed by the parties in their prefiled and oral hearing testimony.

A. Proposed Exhibit ENT000606

As noted above, Proposed Exhibit ENT000606 is Entergy letter NL-13-037,⁶ which updates Entergy's March 28, 2011 responses to parts 1a, 1b and 1c of NRC Staff request for additional information ("RAI") 3.0.3.1.2-1, as contained in Entergy letter NL-11-032

² The parties recognize that the Board may not be able to rule on this Motion before the parties file their proposed findings of fact and conclusions of law on NYS-5 on or before March 22, 2013. Therefore, insofar as the parties reference Proposed Exhibits ENT000606 and ENT000607 in their proposed findings, and the Board has not admitted them into evidence, the parties will clearly indicate their status as proposed exhibits.

³ See Letter from K. Sutton and P. Bessette, Morgan, Lewis & Bockius LLP, to Administrative Judges, Re: Board Notification Concerning Entergy Letter NL-13-037 (Mar. 15, 2013) ("Board Notification").

⁴ See NL-11-032, Letter from F. Dacimo, Entergy, to NRC Document Control Desk, Response to Request for Additional Information (RAI) Aging Management Programs" (Mar. 28, 2011) (NYS000151).

⁵ See Tr. at 4484-85 (Dec. 13, 2012) (stating that the record should remain open until findings of fact and conclusions of law are submitted, in case any party "would want to either supplement or correct the record").

⁶ Letter from F. Dacimo, Entergy, to NRC Document Control Desk, "Revision to the Response to Request for Additional Information (RAI) Aging Management Programs" (Mar. 5, 2013) ("NL-13-037") (Proposed Exhibit ENT000606).

(NYS000151). The purpose of NL-13-037 and its effect on Entergy's testimony concerning NYS-5 are described in Entergy's Board Notification, as well as in the Joint Declaration that accompanies this Motion and that Entergy is proffering as Proposed Exhibit ENT000607. In brief, NL-13-037 updates NL-11-032 to reflect the NRC Staff's decision, as documented in Final License Renewal Interim Staff Guidance, LR-ISG-2011-03,⁷ to combine the code class/safety-related and hazardous material ("hazmat") buried piping categories into a single category, thereby allowing licensees to select inspection locations based on plant-specific risk ranking rather than piping categories.⁸ Entergy submits that because NL-13-037 updates a previously-admitted exhibit (NYS000151) that is referenced in the parties' testimony, it is a relevant and material document that should be admitted into evidence as ENT000606.

B. Proposed Exhibit ENT000607

As mentioned above, Proposed Exhibit ENT000607 is a Joint Declaration prepared by Entergy witnesses Nelson Azevedo, Alan Cox, and Ted Ivy,⁹ all of whom submitted prefiled testimony and testified at the hearing on NYS-5.¹⁰ In addition to describing NL-13-037, the Joint Declaration identifies and proposes some minor updates to the witnesses' testimony on NYS-5 that are directly related to NL-13-037 (Proposed Exhibit ENT000606). As explained

⁷ See Final License Renewal Interim Staff Guidance, LR-ISG-2011-03, "Changes to GALL Report Revision 2 Aging Management Program (AMP) XI.M41, 'Buried and Underground Piping and Tanks'" (Aug. 2012) ("Final LR-ISG-2011-03") (NRC000162).

⁸ Appendix A to Final LR-ISG-2011-03 contains the revised (and current) version of NUREG-1801, Rev. 2, Section XI.M41, which supersedes the version of Section XI.M41 issued in December 2010. See Final LR-ISG-2011-03 at 10 (NRC000162) ("The guidance described in this final LR-ISG supersedes the affected sections of the SRP-LR and GALL Report and is approved for use by the NRC staff and stakeholders."). Final LR-ISG-2011-03 modified NUREG-1801, Rev. 2 Section XI.M41, Table 4a (Inspections of Buried Pipe) to combine code class/safety-related and hazmat buried piping into a single category. *Id.*, App. A at A-6 to A-8.

⁹ See Joint Declaration of Nelson Azevedo, Alan Cox, and Ted Ivy Concerning Entergy Letter NL-13-037 and Related Updates to Entergy's Testimony on Contention NYS-5 (Buried Piping) (Mar. 20, 2013) ("Joint Declaration") (Proposed Exhibit ENT000607).

¹⁰ See Testimony of Applicant Witnesses Alan Cox, Ted Ivy, Nelson Azevedo, Robert Lee, Stephen Biagiotti, and Jon Cavallo Concerning Contention NYS-5 (Buried Piping and Tanks) (Dec. 6, 2012) (ENTR30373).

therein, the updates are intended to make affected portions of Entergy's testimony consistent with the updated RAI responses contained in NL-13-037.¹¹ In short, per Final LR-ISG-2011-03 recommendations, Entergy has combined the code class/safety-related and hazmat buried piping categories into a single category (Code/SR/Hazmat).¹² Also, since the hearing in December 2012, Entergy has completed six excavated direct visual inspections of buried piping within the scope of license renewal in the IPEC Unit 2 transformer yard.¹³ The inspected piping is code class/safety-related piping.¹⁴ Therefore, Mr. Azevedo is updating his oral testimony to reflect that Entergy has now completed all 20 of the excavated direct visual inspections of Unit 2 in-scope buried piping that are required before entering the period of extended operation.¹⁵

III. CONCLUSION

For the foregoing reasons, the Board should admit Proposed Exhibits ENT000606 and NYS000607 into evidence. The documents are relevant to testimony proffered at hearing, will contribute to the development of a sound record, may assist the Board in reaching its decisions on the merits, and will not cause undue delay or prejudice to any party.

¹¹ During their consultations on this Motion, the parties agreed that given the completion of the hearing on NYS-5 in December 2012 and the imminent deadline for filing proposed findings, it was most practical for Entergy to make the necessary testimony updates through a Joint Declaration (as opposed to re-filing its NYS-5 testimony (ENTR30373) in its entirety with a new exhibit number).

¹² As stated in the Joint Declaration, this change does not affect the Buried Piping and Tanks Inspection Program ("BPTIP") descriptions provided in the Updated Final Safety Analysis Report ("UFSAR") Supplements for Indian Point Units 2 and 3, as contained in Sections A.2.1.5 and A.3.1.5 of the license renewal application; any related Entergy commitments (Commitments 3 and 48) reflected in those LRA sections and Entergy's List of Regulatory Commitments; the total number of excavated direct visual inspections that Entergy has committed to perform before and during the period of extended operation; Entergy's use of the risk-ranking process described in the UFSAR Supplements and Entergy procedures; or the NRC Staff's conclusion that Entergy is performing a sufficient number of risk-informed direct visual inspections of in-scope buried piping. *See* Joint Declaration at ¶¶ 8-9.

¹³ Joint Declaration at ¶ 13.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 14.

Respectfully submitted,

Executed in accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 20th day of March 2013

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MOTION CERTIFICATION

Pursuant to 10 C.F.R. § 2.323(b), counsel for Entergy certifies that he made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues, and he certifies that his efforts have been successful.

Executed in accord with 10 C.F.R. § 2.304(d)

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I hereby certify that, on this date, a copy of “Entergy’s Motion for Leave to File, and Request the Admission of, Two New Hearing Exhibits Related to Contention NYS-5 (Buried Piping)” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Lance A. Escher

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