

April 22, 2013

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/ 50-286-LR
)	
(Indian Point Nuclear Generating)	
Units 2 and 3))	

NRC STAFF'S UNOPPOSED MOTION FOR LEAVE TO FILE
AN ADDITIONAL EXHIBIT AND REVISIONS TO ITS
PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW ON CONTENTION NYS-5 (BURIED PIPING AND TANKS)

In accordance with 10 C.F.R. § 2.232(a), the NRC Staff ("Staff") hereby requests leave to file (1) an additional hearing exhibit (Ex. NRC000167) concerning Contention NYS-5 (Buried Piping and Tanks),¹ (2) a revision to Answer 31 of the Staff's written testimony on Contention NYS-5,² and (3) related revisions to the Staff's proposed findings of fact and conclusions of law regarding Contention NYS-5.³ In support of this request, the Staff states as follows:

1. The Staff filed its proposed findings of fact and conclusions of law on Contention NYS-5 and eight other "Track 1" contentions on March 22, 2013, in accordance with the Board's scheduling Orders in this proceeding.⁴

¹ "Declaration of William C. Holston Updating NRC Staff's Testimony on Contention NYS-5 (Buried Piping And Tanks) to Address New Information Submitted by Applicant Entergy Nuclear Operations, Inc." (Apr. 22, 2013) ("Holston Declaration") (proposed exhibit NRC000167).

² "NRC Staff's Testimony of Kimberly J. Green and William C. Holston Concerning Contention NYS-5 (Buried Pipes and Tanks)" (Dec. 7, 2012) ("Staff Testimony on NYS-5") (Ex. NRRCR20016)

³ "NRC Staff's Proposed Findings of Fact and Conclusions of Law / Part 2: Contention NYS-5 (Buried Piping and Tanks)" (Mar. 22, 2013) ("Proposed Findings" or "PFF").

⁴ See "Order (Granting Parties Joint Motion for Alteration of Filing Schedule)" (Feb. 28, 2013).

2. In its Proposed Findings on Contention NYS-5, the Staff discussed the “Buried Piping and Tanks Inspection Program (“BPTIP”) which had been submitted by Entergy Nuclear Operations, Inc. (“Entergy” or “Applicant”), and which was “evaluated by the Staff and approved in SER Supplement 1, issued in August 2011.”⁵ As the Staff noted in n. 51 of its Proposed Findings, on March 15, 2013 (*i.e.*, one week prior to the parties’ filing of proposed findings of fact and conclusions of law on this contention), the Applicant had filed a Board Notification informing the Board and parties that it had revised its responses to the Staff’s requests for additional information (“RAIs”) on buried piping, which Entergy had submitted in its letter of March 28, 2011 (NL-11-032) (Ex. NYS000151).⁶ The Applicant’s Board Notification stated, *inter alia*, that (a) “hazmat” buried piping is no longer being treated as a separate category of inspection, and is instead included in the total number of inspections to be conducted prior to and during the period of extended operation (“PEO”), and (b) all 20 of the planned pre-PEO IP2 inspections have been completed.⁷

3. As the Staff further observed in n. 51 of its Proposed Findings, on March 20, 2013, the Applicant filed an unopposed motion for leave to admit two additional exhibits reflecting these changes: (a) a letter from Entergy to the NRC dated March 5, 2013 (NL-13-037), amending its responses to the Staff’s RAIs (new Exhibit ENT000606), and (b) a Joint Declaration by Entergy witnesses Nelson Azevedo, Alan Cox and Ted Ivy, amending their

⁵ Proposed Findings at 57, ¶ 2.118, *citing* Staff Testimony on NYS-5 (Ex. NRCR20016), at 61; see “Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Units 2 and 3,” Supplement 1 (Aug. 2011) (“SER Supp. 1”) (Ex. NYS000160), at 3-1 to 3-5.

⁶ Proposed Findings at 57 n.51. See (1) Letter from Kathryn Sutton, Esq. and Paul Bessette, Esq. to the Board, re: Board Notification Concerning Entergy Letter NL-13-037) (Mar. 15, 2013) (“Board Notification”); (2) Letter from Fred R. Dacimo (Entergy) to NRC Document Control Desk, “Revision to the Response to [RAI] Aging Management Programs” (NL-13-037) (Mar. 5, 2013) (Ex. ENT000606); and (3) Letter from Fred R. Dacimo (Entergy) to NRC Document Control Desk, “Response to [RAI] Aging Management Programs (NL-11-032) (Mar. 28, 2011) (Ex. NYS000151) (“RAI Response”).

⁷ Proposed Findings at 57 n.51; See Board Notification, Attachment 1 at p. 1 of 2.

prefiled and oral testimony on this contention (“Joint Declaration”) (new Exhibit ENT000607).⁸

On March 22, 2013, the Board admitted these two exhibits.⁹

4. In n. 51 of its Proposed Findings, the Staff observed that Entergy’s witnesses, *inter alia*, made the following statements in their Joint Declaration:

[T]he revised RAI responses do not affect the [BPTIP] descriptions provided in the [UFSAR] Supplements for [IP2 and IP3], [and] do not affect any related Entergy commitments (Commitment Nos. 3 and 48) There also is no change to the total number of excavated direct visual inspections that Entergy has committed to perform before and during the [PEO], or to Entergy’s use of the risk-ranking process described in the UFSAR Supplements (NL-12-174, Attach. 2 (ENT000597)) and CEP-UPT-0100, Rev. 1 [(Nov. 30, 2012) (Ex. ENT000598)]. There also is no effect on the Staff’s conclusion in [SER] Supplement 1 (NYS000160) that Entergy is performing a sufficient number of risk-informed inspections.¹⁰

5. As the Staff noted in n. 51 of its Proposed Findings, the Staff did not oppose Entergy’s Motion, but stated that it “reserves the right to make any necessary updates or corrections to its testimony that may arise from Entergy’s submittal of [Ex. ENT000606 and Ex. ENT000607].”¹¹ In addition, the Staff noted “that it has not yet had an opportunity to consider this new evidence, to address it in revised Staff testimony, or to address it in its Proposed Findings; accordingly, the Staff may seek leave to file a revision to these Proposed Findings of Fact, if necessary, to address this newly admitted evidence.”¹²

6. Since filing its Proposed Findings, the Staff has had an opportunity to review the Applicant’s new exhibits (Ex. ENT000606 and Ex. ENT000607), and has examined the effect of

⁸ See “Entergy’s Unopposed Motion for Leave to File, and Request the Admission of, Two New Hearing Exhibits Related to Contention NYS-5 (Buried Piping)” (Mar. 20, 2013) (“Entergy’s Motion”).

⁹ Proposed Findings at 57 n.51, *citing* “Order (Granting Entergy’s Motion for Leave to File Two Hearing Exhibits)” (Mar. 22, 2013).

¹⁰ *Id.*, *citing* Joint Declaration at 3-4; see Entergy’s Motion at 1 n.1.

¹¹ Proposed Findings at 57 n.51.

¹² *Id.*

this new evidence on the Staff's testimony and Proposed Findings. Based on its review, the Staff has determined that limited revisions of the Staff's prefiled written testimony and its Proposed Findings should be made to reflect this new information.

7. Accordingly, the Staff is filing herewith a proposed new exhibit, Ex. NRC000167, which addresses the new information contained in Entergy's newly admitted exhibits. Exhibit NRC000167 consists of a Declaration by NRC Staff witness William C. Holston, in which he states that he has reviewed Exhibits ENT000606 and ENT000607, and that a revision should be made to his prefiled written testimony to address the new information. Specifically, Mr. Holston states that one paragraph in Answer 31 of his testimony should be revised, as follows:

~~Of the 94 excavated direct visual examinations of buried in-scope piping which the Applicant has committed to conduct, 53 of its planned inspections will be conducted on~~ include ~~systems containing hazardous materials (i.e., materials that are radioactive or deleterious to the environment). In addition, if the soil sample testing demonstrates that the soil environment is corrosive, 16 of the additional 24 inspections that will be conducted (i.e., the 24 inspections that would supplement the planned 94 inspections) will be conducted on systems containing hazardous materials.~~ As discussed above, the Applicant is also risk-ranking the inspection locations based on the potential for corrosion and the consequences of leakage. The committed inspection scope of 53 inspections for systems containing hazardous material, combined with the Applicant's preventive actions, its selection of risk-informed inspection locations in the Applicant's Buried Piping and Tanks Inspection program, and its Corrective Action program, provides reasonable assurance that in-scope buried components which contain radioactive fluids or other hazardous material will meet their intended CLB functions during the period of extended operation.

Declaration (Ex. NRC000167) at 3 ¶ 6, *citing* Staff Testimony on Contention NYS-5 (Ex. NRCR20016) at 40-41.

8. In his Declaration, Mr. Holston further states that the new information does not affect any other portions of his prefiled written or oral testimony, and does not affect any of the conclusions stated in his prefiled written or oral testimony or the conclusions stated in SER Supplement 1, regarding the Applicant's AMP for buried piping and tanks. *Id.* at 4 ¶ 7.

9. Finally, Mr. Holston states that he agrees with Entergy's witnesses in their Joint Declaration (ENT000607), (a) that the new information does not affect the BPTIP descriptions provided in the IP2 and IP3 UFSAR Supplements, or Entergy's Commitments 3 and 48; (b) that no change has been made to the total number of excavated direct visual inspections of in-scope buried piping to be conducted prior to and during the PEO, or to Entergy's use of the risk-ranking process described in the Supplements to the IP2 and IP3 UFSAR; (c) that the revisions are consistent with Staff guidance in LR-ISG-2011-03 (Ex. NRC000162); and (d) that the revisions have no effect on the conclusion in SER Supplement 1 that Entergy is performing a sufficient number of risk-informed inspections. *Id.* at 4 ¶ 8.

10. Accordingly, the Staff herewith submits proposed new Exhibit NRC000167, and requests that it be admitted into evidence and that the Staff's prefiled written testimony (Ex. NRCR20016) be revised as stated in Ex. NRC000167.

11. In addition, the Staff hereby requests that its proposed findings of fact and conclusions of law on Contention NYS-5 be revised to reflect the new information contained in Exhibits ENT000606, ENT000607 and NRC000167, as set forth at pages 57 – 61 of the "NRC Staff's Revised Proposed Findings of Fact and Conclusions of Law / Part 2: Contention NYS-5 (Buried Piping And Tanks), dated March 22, 2013, as revised 04/22/2013 ("Revised Proposed Findings"), submitted herewith.¹³

12. Counsel for the Staff has consulted with Counsel for the Applicant, State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater, Inc., and is authorized to state that those parties do not object to the admission of Ex. NRC000167, revising the Staff's prefiled written testimony on Contention NYS-5, or the Staff's revision of its proposed findings of fact and conclusions of law to reflect the new information discussed above.

¹³ In its Revised Proposed Findings, the Staff also corrects a typographical error that appeared in n.51 of its Proposed Findings, replacing the word "modern" with the word "modest," to correctly reflect the actual statement cited therein.

WHEREFORE, the Staff respectfully requests that the Board (a) admit the Declaration of Staff witness William C. Holston (Ex. NRC000167) into evidence, (b) permit the Staff's prefiled written testimony on Contention NYS-5 (Ex. NRCR20016) to be revised in the manner set forth in Ex. NRC000167, and (c) permit the Staff's proposed findings of fact and conclusions of law on Contention NYS-5 to be revised in the manner set forth in the Staff's Revised Proposed Findings, submitted herewith.

Respectfully submitted,
Signed Electronically by

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Dated at Rockville, Maryland
 this 22nd day of April 2013

CERTIFICATION OF COUNSEL

Pursuant to 10 C.F.R. § 2.323(b), the undersigned attorney hereby certifies that he has made a sincere effort to contact all of the other parties to this proceeding to resolve the issues raised in its Motion, and that his efforts to resolve this issue have been successful, as set forth above.

Signed Electronically by

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 U.S. Nuclear Regulatory Commission
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Dated at Rockville, Maryland
 this 22nd day of April 2013

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

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the (1) "NRC STAFF'S UNOPPOSED MOTION FOR LEAVE TO FILE AN ADDITIONAL EXHIBIT AND REVISIONS TO ITS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CONTENTION NYS-5 (BURIED PIPING AND TANKS)," dated April 22, 2013; (2) "DECLARATION OF WILLIAM C. HOLSTON UPDATING NRC STAFF'S TESTIMONY ON CONTENTION NYS-5 (BURIED PIPING AND TANKS) TO ADDRESS NEW INFORMATION SUBMITTED BY APPLICANT ENTERGY NUCLEAR OPERATIONS, INC.," dated April 22, 2013, (3) "NRC STAFF'S REVISED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW/PART 2: CONTENTION NYS-5 (BURIED PIPING AND TANKS)," dated March 22, 2013, as revised 04/22/2013, and (4) Revised List of NRC Staff Hearing Exhibits (Ex. NRCR80001), as revised April 22, 2013, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 22nd day of April, 2013.

/Signed (electronically) by/

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