

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)	)	

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NRC STAFF'S REPLY TO PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW ON  
CONTENTION NYS-6/7 (NON-EQ INACCESSIBLE MEDIUM AND LOW VOLTAGE CABLES)

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May 3, 2013

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I. INTRODUCTION<sup>1</sup>

3.126 On March 22, 2013, in accordance with 10 C.F.R. § 2.1209 and the Atomic Safety and Licensing Board's Orders<sup>2</sup>, Entergy Nuclear Operations, Inc ("Entergy"),<sup>3</sup> the State of New York ("the State" or "NYS"),<sup>4</sup> and the NRC Staff ("Staff")<sup>5</sup> filed proposed findings of fact and conclusions of law concerning Contention NYS-6/7 (Non-EQ Inaccessible Medium and Low Voltage Cables). Pursuant to the Licensing Board's Order of February 28, 2013, the Staff

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<sup>1</sup> The paragraph numbering system in these reply findings continues from the last numbered paragraph in the NRC Staff's Proposed Findings of Fact and Conclusions of Law Part 3: Contention NYS-6/7 (Non-EQ Inaccessible Medium And Low Voltage Cables) ("Staff PFF"). Thus ¶ 3.126 should be read to follow Staff PFF ¶ 3.125 .

<sup>2</sup> See (1) Scheduling Order (July 1, 2010), at 19; (2) Order (Scheduling Post-Hearing Matters and Ruling on Motions to File Additional Exhibits) (Jan. 15, 2013) at 1; and (3) Order (Granting Parties' Joint Motion for Alteration of Filing Schedule) (Feb. 28, 2013).

<sup>3</sup> Entergy's Proposed Findings of Fact and Conclusions of Law for Contention NYS-6/7 (Non-EQ Inaccessible Medium and Low Voltage Cables), dated March 22, 2013.

<sup>4</sup> The State of New York's Proposed Findings of Fact and Conclusions of Law as to Consolidated Contention NYS-6/7 (Mar. 22, 2013) ("NYS PFF").

<sup>5</sup> NRC Staff's Proposed Findings of Fact and Conclusions of Law Part 3: Contention NYS-6/7 (Non-EQ Inaccessible Medium And Low Voltage Cables).

herewith files its reply to NYS's proposed findings of fact and conclusions of law concerning NYS-6/7.

## II. REPLIES TO NYS<sup>6</sup>

### A. Preamble<sup>7</sup>

3.127 NYS's proposed findings summarize its view that Entergy's aging management program ("AMP") is deficient. See NYS PFF at 1-2, ¶¶ 1-4. In part the findings summarize Entergy's testimony as the "proposed aging management program [("AMP")] is only sufficient if implemented in accordance with Entergy's procedures, but these implementing procedures were not included" in the AMP. *Id.* at 1 ¶ 3. However, Entergy's witnesses did not condition their statements regarding the sufficiency of the license renewal application ("LRA") and corresponding AMP upon the implementing procedures. See e.g. Testimony of Entergy Witnesses Alan B. Cox, Roger B. Rucker, Thomas S. McCaffrey, and Howard G. Sedding Concerning Contentions NYS-6/NYS-7 (Non-EQ Inaccessible Medium- and Low-Voltage Cables) (Mar. 29, 2012, as revised Sept. 21, 2012) (Ex. ENTR00023) at 13, 15.

3.128 Without citation to the record, the State proposes that the Board finds Entergy's AMP to be deficient for not echoing Entergy's testimony regarding how plant-specific procedures and design criteria preclude or manage thermal degradation. See NYS PFF at 2, ¶ 4. There is no requirement in the Commission's regulations that would force a LRA to discuss the issues. *Cf.* 10 C.F.R. §§ 54.19, 54.21 (describing the general and technical information in an application).

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<sup>6</sup> The Staff has reviewed Entergy's proposed findings and has determined that a detailed reply thereto is not required. In this regard, the Staff has concluded that the Entergy's findings concerning NYS-6/7 are not inconsistent with the Staff's findings, and any important substantive differences between the Staff's and Entergy's respective views of the evidence are reflected in their proposed findings of fact and conclusions of law filed on March 22, 2013.

<sup>7</sup> The topics in this reply follow the topics framed by NYS.

## B. Legal Standards

3.129 The State proposes that the Board finds that an applicant's LRA is insufficient if it merely asserts that the applicant will comply with NUREG-1800, Generic Aging Lessons Learned (GALL) Report. NYS PFF at 5 ¶ 11 (citing *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station, CLI-10-17, 72 NRC 1, 45 (2010))). The State does not properly summarize the Commission's holding in the Vermont Yankee case. The Commission said:

Moreover, in Oyster Creek, we expressly interpreted section 54.21(c)(1) to permit a demonstration after the issuance of a renewed license: an “applicant's use of an aging management program identified in the GALL Report constitutes reasonable assurance that it *will* manage the targeted aging effect during the renewal period.” We reiterate here that a commitment to implement an AMP that the NRC finds is consistent with the GALL Report constitutes one acceptable method for compliance with 10 C.F.R. § 54.21(c)(1)(iii).

*Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 36 (2010) (footnote omitted) (emphasis in original) (citing *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 468 (2008)).

3.130 The Commission continued:

The GALL Report provides that one way a license renewal applicant may demonstrate that an AMP *will* effectively manage the effects of aging during the period of extended operation is by stating that a program is “consistent with” or “based on” the GALL Report.<sup>204</sup>

An applicant may commit to implement an AMP that is consistent with the GALL Report and that *will* adequately manage aging.

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<sup>204</sup> In the GALL Report, the Staff recognizes acceptable AMPs, .... A license renewal application may reference the GALL Report to demonstrate that the applicant's AMP corresponds to one that has been reviewed and approved in that Report

*Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 37 n.204 (2010) (emphasis in original).

3.131 Recently, the Commission made clear that the holdings above (i.e. that a demonstration may be found though consistency with the GALL report) apply to AMPS under 10 C.F.R. § 54.29(a) as well as the 10 C.F.R. § 54.21(c)(1)(iii) AMP at issue in *Vermont Yankee*, writing:

If the NRC concludes that an aging management program (AMP) is consistent with the GALL Report, then it accepts the applicant's commitment to implement that AMP, finding the commitment itself to be an adequate demonstration of reasonable assurance under section 54.29(a).

*NextEra Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 NRC 301, 304 (2012), *petition for review denied sub nom. Beyond Nuclear v. Nuclear Regulatory Com'n*, 704 F.3d 12 (1st Cir. 2013) (citing *Vermont Yankee*, CLI-10-17, 72 NRC 1, 36 (2010); *Oyster Creek*, CLI-08-23, 68 NRC at 467-68 (2008)).

3.132 Thus, the proposed finding in NYS PFF at 5, ¶ 11 incorrectly reflects the Commission's holdings in *Vermont Yankee*, as reiterated in *Oyster Creek*, and *Seabrook*. The NYS proposed finding would have this Board reverse Commission precedent.

#### C. Conclusions of Law

3.133 The State implies that the NRC Staff is indeterminate concerning the sufficiency of the LRA because the NRC Staff "has not yet made a determination" relative to EN-DC-346. NYS PFF at 46 ¶ 158(A). The sufficiency of EN-DC-346 is addressed though the hearing, and the Board's findings are based on the parties' affirmative cases and the evidence presented concerning the procedure. See 10 C.F.R. § 2.340(a)(1).

3.134 The State proposes, without citation to the record, a finding wherein Entergy's witnesses assert that implementing procedures are needed to comply with the GALL Report. NYS PFF at 46-47, ¶ 158(B). Entergy's witnesses testified that the procedure EN-DC-346 was

developed to implement the Non-EQ Inaccessible Medium Voltage Cable Program, and that the procedure provided the detail which NYS alleged was missing. Testimony of Entergy Witnesses Alan B. Cox, Roger B. Rucker, Thomas S. McCaffrey, and Howard G. Sedding Concerning Contentions NYS-6/NYS-7 (Non-EQ Inaccessible Medium- and Low-Voltage Cables) (Mar. 29, 2012, as revised Sept. 21, 2012) (Ex. ENTR00023) at 15. The witnesses did not say that implementing procedures are required for a LRA to comply with the GALL Report.

3.135 The State proposes, without citation to the record, that implementing procedures are not binding and enforceable, and not incorporated into the updated final safety analysis report ("FSAR"). NYS PFF at 47, ¶ 158(B). The finding is contrary to the testimony on this matter. See Tr. at 4074-75 (essential elements of the program are included in the FSAR supplement).

3.136 With respect to thermal degradation or ohmic heating, the State acknowledges and does not dispute Entergy's evidence that 1) no external cable-aging heat sources are known, 2) only cable-to-cable heating might be present, 3) thermal issues were addressed in design, 4) the plant change process considers changes to thermal loading, and 5) Entergy's AMP for moisture would likewise address heat. NYS PFF at 47, ¶ 159. The State proposes that the Board find the Entergy's AMP deficient for not incorporating the five "representations" into an AMP. See *id.* The Commission's regulations do not require an application to provide affirmative statements on aging mechanisms which: 1) are not known to be present, 2) are unproven to be present, 3) were addressed during plant design, 4) would be addressed through the design change process, and 5) would be managed if they existed. See 10 C.F.R. §§ 54.21 (contents of application - technical information); *Cf.* 10 C.F.R. § 54.30 (matters not subject to renewal review).

Respectfully submitted,

***/Signed (electronically) by/***

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Dated at Rockville, Maryland  
this 3rd day of May 2013

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S REPLY TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CONTENTION NYS-6/7 (NON-EQ INACCESSIBLE MEDIUM AND LOW VOLTAGE CABLES)" dated May 3, 2013, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 3rd day of May 2013.

**/Signed (electronically) by/**

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