

July 1, 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/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

NRC STAFF'S 17TH 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 17th monthly status report to the Board.

1. FSEIS Supplement. As stated in Staff Counsel's letter to the Board of June 21, 2013,¹ the Staff has published the Final Supplemental Environmental Impact Statement ("FSEIS") Supplement (Volume 4) related to license renewal of Indian Point Units 2 and 3 ("IP2" and "IP3"); copies of the FSEIS Supplement were transmitted to the Board and parties on June 21, 2013, and a notice of availability has been published. 78 Fed. Reg. 39,018 (June 28, 2013). The FSEIS Supplement addresses aquatic impacts (including impacts to endangered species), and the issuance of a Biological Opinion by the National Marine Fisheries Service ("NMFS") on January 30, 2013, regarding license renewal of IP2 and IP3,² upon the conclusion

¹ Letter from Sherwin E. Turk to the Atomic Safety and Licensing Board (June 21, 2013).

² See (1) "NRC Staff's 16th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (June 3, 2013) ("16th Status Report"), at 2; (2) Letter from John K. (continued. . .)

of consultations between the Staff, NMFS and Entergy Nuclear Operations, Inc. (“Entergy” or “Applicant”) under Section 7 of the Endangered Species Act (“ESA”). This matter is the subject of Contention RK-EC-8; no other contentions are affected by the FSEIS Supplement.³

2. Contention RK-EC-8. As summarized by the Board, Contention RK-EC-8 “alleges that “the NRC Staff has failed to complete its formal consultation process with NMFS before issuing its . . . FSEIS, and that, without the input from NMFS, the NRC Staff was unable to take a hard look at those impacts as required by NEPA.”⁴ The FSEIS Supplement, issued following the conclusion of consultations with NMFS, considers NMFS’s Biological Opinion and its Incidental Take Statement regarding license renewal of IP2/IP3. The Staff understands that the Applicant has initiated consultations among the parties regarding the filing of a motion to dismiss Contention TK-EC-8 as moot.

3. SER Supplement 2. As also stated previously,⁵ the Staff plans to issue a supplement (Supplement 2) to its Safety Evaluation Report (“SER”) related to license renewal of IP2/IP3. In SER Supplement 2, the Staff expects to address the information provided in the Applicant’s responses to Staff requests for additional information (“RAIs”) following the issuance of SER Supplement 1 in October 2011, including information concerning the Applicant’s Reactor Vessel Internals (“RVI”) Aging Management Program and Inspection Plan (“AMP”). Given the ongoing and presently incomplete status of the Staff’s review of that AMP, and the likelihood that the Staff will seek to obtain further information from the Applicant on RVI

(. . .continued)

Bullard (Regional Administrator, Northeast Region, National Oceanic and Atmospheric Administration), to Dr. Amy Hull (NRC) (January 30, 2013) (ADAMS Accession No. ML13032A256).

³ See NRC Staff’s 16th Status Report, at 2.

⁴ “Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions)” (July 6, 2011), slip op. at 68.

⁵ See NRC Staff’s 16th Status Report, at 2.

issues,⁶ the Staff is currently unable to provide a reliable projected date for issuance of an SER Supplement on RVI issues. The Staff will provide further information to the Board regarding this matter as it becomes available.

4. Track 2 Safety Issues. As stated previously,⁷ the Staff believes that hearings on Track 2 safety issues related to the Applicant's RVI aging management program (Contentions NYS-25 and portions of NYS-38/ RK-TC-5) should be deferred until the Staff has completed its evaluation of this matter. In addition, to promote efficiency and conservation of resources, and to assure there is no overlap in the issues or testimony, the Staff believes that evidentiary hearings on the remaining Track 2 safety issues (Contentions NYS-26B/RK-TC-1B and remaining portions of NYS-38/RK-TC-5) should be deferred to coincide with hearings on Contention NYS-25 and RVI-related portions of Contention NYS-38/RK-TC-5.

5. Waste Confidence. As the Staff also noted previously,⁸ the Commission has undertaken further consideration of its "Waste Confidence Decision," and has stated that it "will not issue licenses dependent upon the Waste Confidence Decision or the Temporary Storage Rule until the court's remand [in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)] is appropriately addressed."⁹ Following issuance of the Court of Appeals' decision, the Intervenors in this proceeding filed new contentions related to waste storage and/or disposal, to which the Applicant and Staff responded on August 2 and 3, 2012. On August 8, 2012, the

⁶ The Staff plans to issue supplemental requests for additional information to the Applicant concerning RVI issues, following the issuance of technical and guidance documents by the Electric Power Research Institute ("EPRI") concerning MRP-227-A. See NRC Staff's 16th Status Report, at 2-3.

⁷ See NRC Staff's 16th Status Report, at 3.

⁸ *Id.* at 3-4.

⁹ *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (Aug. 7, 2012).

Board ordered that all other pleadings concerning these contentions be held in abeyance, pending further order.¹⁰

6. CZMA Issues. On June 12, 2013, the Board denied the Applicant's motion,¹¹ and the State of New York's ("New York") cross-motion,¹² seeking a declaratory order regarding the need for a review of the IP2/IP3 license renewal application to determine its consistency with the New York State Coastal Management Program pursuant to the Coastal Zone Management Act ("CZMA").¹³ In its Order, the Board denied the motions without prejudice, in that no consultation has occurred between the Staff, New York and Entergy, pursuant to 15 C.F.R. § 930.51(e); the Board left open the possibility that the motions might be refilled after such consultation occurs. In this regard, the Staff notes that as of this date, consultations have not been initiated between the Staff, New York and Entergy; the Staff will provide further information to the Board regarding this issue as it becomes available in the future.

7. Contention NYS-35/36. As the Board is aware, on May 7, 2013, the Applicant notified the Board that it had submitted to the Staff the results of its completed engineering project cost estimates for Severe Accident Mitigation Alternatives ("SAMAs") which it had

¹⁰ "Order (Holding Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4 in Abeyance)" (Aug. 8, 2012). The Commission has similarly held such contentions in abeyance in other proceedings. See *Calvert Cliffs*, *supra*, 76 NRC at 68-69.

¹¹ "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).

¹² "State of New York Response to Entergy's Request to the Atomic Safety and Licensing Board for a Declaratory Order Concerning Coastal Zone Management Act Issues and Cross-Motion for Declaratory Order" (Apr. 5, 2013) ("Cross-Motion").

¹³ "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013). In its Order, the Board ruled that its "denial of Entergy's and New York's motions does not trigger the time for filing new contentions." *Id.* at 4 n.16, *citing* "Order (Granting State of New York Motion for Extension of Time to File New Contentions)" (Aug. 31, 2012) (requiring the filing of new contentions on Entergy's LRA amendment regarding the need for a CZMA consistency determination within 30 days after the Board rules on Entergy's motion).

previously identified as potentially cost-beneficial.¹⁴ In its Board notification, the Applicant noted that it was submitting the new information “to support resolution of certain issues identified by the Board in its July 14, 2011 decision granting New York’s motion for summary disposition of Consolidated Contention NYS-35/36 [LBP-11-17, 74 NRC 11 (2011)],” and that its letter to the Staff also addressed “certain statements by the Commission in its December 22, 2011 ruling on Entergy’s Petition for Review of that same decision:[CLI-11-14, 74 NRC 801 (2011)].”¹⁵ The Applicant’s submittal thus has the potential to affect litigation of Consolidated Contention NYS-35/36. On June 25, 2013, the Applicant filed a motion seeking clarification and guidance from the Board regarding the timing of further adjudicatory filings regarding this matter;¹⁶ answers to that motion are due on or before July 5, 2013. The Staff has not yet decided whether it will issue a supplement to its FSEIS to address the new information.

8. Contention NYS-16B. On May 17, 2013, New York filed a “Motion for Leave to File an Additional Exhibit and Supplemental Proposed Findings of Fact and Conclusions of Law on Contention NYS-16B,” based upon the Applicant’s recent submission of its completed engineering project cost estimates for its potentially cost-beneficial SAMAs. The Board granted New York’s motion in its Order of June 12, 2013, and granted Entergy’s request for leave to file supplemental proposed findings of fact in response to New York’s supplemental proposed filings, but did not rule upon the Staff’s request to file responsive proposed findings of fact and

¹⁴ See Letter from Kathryn M. Sutton, Esq., *et al.*, to the Board (May 7, 2013), attaching Letter from Fred Dacimo (Entergy) to the NRC Document Control Desk, NL-13-075 (May 6, 2013) (ADAMS Accession No. ML13142A014).

¹⁵ *Id.* at 1 and 2.

¹⁶ “Applicant’s Motion for Clarification Regarding the Timing of Adjudicatory Submissions Related to Entergy Letter NI-13-075” (June 25, 2013).

conclusions of law. On June 21, 2013, the Staff filed a motion for partial reconsideration of this (and one other) aspect of the Board's ruling;¹⁷ responses to the Staff's motion are due today.

9. Contention NYS-5. In its Order of June 12, 2013, the Board, *inter alia*, granted New York's motion for leave to supplement the record on Contention NYS-5 (Buried Piping), filed on June 10, 2013. The Applicant and the Staff have each filed motions for partial reconsideration of this aspect of the Board's Order, to afford them the opportunity to file responses to New York's motion so that the Board may consider those responses in ruling on New York's motion.¹⁸

10. The Staff is not currently aware of any other matter that has the potential to impact the schedule for hearings in 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 1st day of July 2013

¹⁷ "NRC Staff's Motion for Partial Reconsideration of the Board's Order of June 12, 2013 (Granting New York's Motions to Supplement the Record on Contentions NYS-5 and NYS-16B)" (June 21, 2013) ("Staff Motion for Partial Reconsideration"), at 3-5..

¹⁸ Staff Motion for Partial Reconsideration, at 2-3; "Applicant's Motion for Reconsideration of the Board's Decision to Admit Additional New York Exhibits Concerning Contention NYS-5" (June 14, 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 17TH STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated July 1, 2013, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 1st day of July, 2013.

/Signed (electronically) by/

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