

July 5, 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 RESPONSE TO ENTERGY'S MOTION FOR CLARIFICATION
REGARDING THE TIMING OF ADJUDICATORY SUBMISSIONS
RELATED TO ENTERGY LETTER NL-13-075

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the motion filed by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") for clarification of the time that adjudicatory submissions are to be submitted regarding Entergy's letter to the Staff dated May 6, 2013 (NL-13-075).¹ As more fully set forth below, the Staff does not oppose Entergy's Motion, insofar as it seeks clarification and guidance from the Board; the Staff opposes, however, Entergy's proposed timing for such submissions and proposes an appropriate and preferable alternative thereto.

DISCUSSION

In its Memorandum and Order of July 14, 2011 (LBP-11-17), the Atomic Safety and Licensing Board ("Board") granted summary disposition in favor of the State of New York ("New York") on Consolidated Contention NYS-35/36.² Therein, the Board found that the Staff's Final

¹ "Entergy's Motion for Clarification Regarding the Timing of Adjudicatory Submissions Related to Entergy Letter NL-13-075" (June 25, 2013) ("Motion").

² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), LBP-11-17, 74 NRC 11, *petition for interlocutory review denied*, CLI-11-14, 74 NRC 801 (2011).

Supplemental Environmental Impact Statement (“FSEIS”) for license renewal of Indian Point Units 2 and 3 (“IP2” and “IP3”) was deficient, *inter alia*, for not including consideration of completed engineering project cost estimates for implementation of the Severe Accident Mitigation Alternatives (“SAMAs”) which the Applicant had identified as potentially cost-beneficial.³ By letter dated May 6, 2013, Entergy submitted its completed engineering project cost estimates to the NRC;⁴ on May 7, 2013, Entergy provided notification to the Board and parties of that submittal;⁵ and on June 25, 2013, Entergy filed the instant Motion, seeking clarification and guidance from the Board as to the appropriate timing of further adjudicatory submissions regarding this issue.

The Staff does not oppose Entergy’s Motion, insofar as it seeks clarification or guidance from the Board. Entergy’s submission of its completed engineering project cost information appears to be relevant and material to the Board’s decision in LBP-11-17. Accordingly, one or more of the parties may wish to file additional pleadings before the Board, in light of that newly submitted information.⁶ A ruling by the Board as to the appropriate timing for such submissions may assist the parties in planning those submissions.

Nonetheless, the Staff opposes Entergy’s proposal that “any future adjudicatory submissions arising from information in NL-13-075 be made within 30 days of the NRC Staff’s issuance of its written evaluation of that information, whatever form that may take.”⁷ First, the Commission’s regulations require that new or amended contentions are to be filed based upon

³ LBP-11-17, 74 NRC at 25-27.

⁴ Letter from F. Dacimo (Entergy) to NRC Document Control Desk, NL-13-075, Subject: “License Renewal Application – Completed Engineering Project Cost Estimates for SAMAs Previously Identified as Potentially Cost-Beneficial” (May 6, 2013) (“NL-13-075”), available in ADAMS at Accession No. ML13142A014.

⁵ Letter from Kathryn M. Sutton, Esq. and Paul M. Bessette, Esq. to the Board (May 7, 2013).

⁶ Such filings might include, without limitation, motions to reopen, motions for reconsideration, and/or new or amended contentions.

⁷ Motion at 7.

the availability of new information, without awaiting the Staff's issuance of an evaluation of that information. See 10 C.F.R. §§ 2.309(f)(1)(vi) and (2)(i)-(iii). In the event that the Staff later issues an evaluation of that information, amended contentions may be filed, as contemplated in the regulations.

Second, the Staff is reviewing Entergy's recently-submitted engineering project cost estimates, and has not determined whether (or if so, when) it will issue a supplement to the FSEIS or other evaluation to address that information.⁸ However, regardless of whether or not the Staff issues a Supplement to the FSEIS or other evaluation, it would be inefficient for the Board to allow the parties to defer indefinitely the filing of any adjudicatory submissions on this issue, simply to await the possible issuance of a Staff evaluation. Accordingly, the Staff believes that the timing for additional adjudicatory submissions should be established based upon a date certain (*e.g.*, 30 days from the date of the Board's Order), rather than the date (if any) that a Staff evaluation of that information is issued.

CONCLUSION

For the foregoing reasons, the Staff does not oppose Entergy's motion insofar as it seeks clarification or guidance from the Board as to the appropriate timing for further adjudicatory submissions regarding its completed engineering project cost estimates. The Staff, however, opposes Entergy's proposal that adjudicatory submissions be deferred indefinitely to await the possible issuance of a Staff evaluation, and suggests, instead, that the timing for the submission of adjudicatory filings regarding Entergy's completed engineering project cost

⁸ See Motion at 5; "NRC Staff's 17th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012" (July 1, 2013), at 5 ¶ 7; Transcript of Teleconference (June 10, 2013), Tr. at 4515-16, 4518-19.

estimates be established with reference to a date certain, such as the date of a Board Order on Entergy's Motion, rather than the date of any potential Staff evaluation of that information.

Respectfully submitted

/Signed Electronically by/

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Dated at Rockville, Maryland
this 5th day of July 2013

CERTIFICATION OF COUNSEL

Counsel for the Staff certifies that he has made a sincere effort to make himself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been successful, in part, as set forth in the foregoing Response.

Respectfully submitted,

/Signed (electronically) by/

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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 RESPONSE TO ENTERGY’S MOTION FOR CLARIFICATION REGARDING THE TIMING OF ADJUDICATORY SUBMISSIONS RELATED TO ENTERGY LETTER NL-13-075,” dated July 5, 2013, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 5th day of July, 2013.

/Signed (electronically) by/

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