

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman  
Dr. Michael F. Kennedy  
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

July 9, 2013

ORDER

(Granting Entergy's Motion Clarification)

On June 25, 2013, Entergy Nuclear Operations, Inc. (Entergy) filed a motion for clarification regarding the timing of adjudicatory submissions related to Entergy communication NL-13-075, which is related to Contention NYS-35/36.<sup>1</sup> Contention NYS-35/36 "challenges the NRC Staff's failure, in its December 2010 Final Supplemental Environmental Impact Statement (FSEIS), (1) to require completion of cost analyses for the SAMAs that appear to be cost-beneficial and (2) to require Entergy either to implement mitigation alternatives when the benefits of those alternatives substantially outweigh costs or, in the alternative, to explain with a rational basis why the NRC Staff would allow Entergy's licenses to be renewed without the implementation of the cost-beneficial SAMAs."<sup>2</sup>

On July 14, 2011, we granted summary disposition in favor of the State of New York (New York) on Contention NYS-35/36, and "in so doing, [held] that, under NRC Regulations, the

<sup>1</sup> See Applicant's Motion for Clarification Regarding the Timing of Adjudicatory Submissions Related to Entergy Letter NL-13-075 (June 25, 2013) at 1 [hereinafter Applicant's Motion].

<sup>2</sup> LBP-11-17, 74 NRC 11, 15 (2011).

APA, and NEPA, Entergy's licenses cannot be renewed unless and until the NRC Staff reviews Entergy's completed SAMA analyses and either incorporates the result of these reviews into the FSEIS or, in the alternative, modifies its FSEIS to provide a valid reason for recommending the renewal of the licenses before the analysis of potentially cost effective SAMAs is complete and for not requiring the implementation of cost-beneficial SAMAs."<sup>3</sup>

On May 6, 2013, Entergy submitted NL-13-075, which contains the "results of its completed engineering project cost estimates for 22 SAMAs previously identified as potentially cost-beneficial as well as an augmented explanation for not implementing certain SAMAs as part of license renewal."<sup>4</sup> Entergy submitted NL-13-075 to support resolution of issues identified by the Board in our July 14, 2011 decision.

In its motion for clarification, Entergy submits that the trigger date for adjudicatory filings based on NL-13-075 is not the day of its submission (May 6, 2013), but instead the NRC Staff's issuance of a draft FSEIS supplement.<sup>5</sup> New York agrees that a FSEIS supplement is the appropriate trigger, but requests that the NRC Staff's issuance of a *final* FSEIS supplement serve as the appropriate trigger.<sup>6</sup> The NRC Staff suggests that adjudicatory submissions regarding NL-13-075 need not await the Staff's completion and documentation of its review and should be based upon this Order.<sup>7</sup>

The Board agrees with Entergy. Our July 14, 2011, Memorandum and Order makes it clear that the NEPA issue addressed in Contention NYS-35/36 cannot be resolved until the

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<sup>3</sup> Id. at 27.

<sup>4</sup> Applicant's Motion at 4.

<sup>5</sup> Id. at 6–8. Entergy suggests that future adjudicatory filings be submitted within 30 days of the NRC Staff's issuance of its written evaluation of NL-13-075, whatever form that may take. Id. at 7.

<sup>6</sup> See State of New York's Answer to Entergy's Motion for Clarification Regarding the Timing of Adjudicatory Submissions Related to Entergy Letter NL-13-075 (July 5, 2013). New York requests 90 days to submit any new contentions based on the Staff's review of NL-13-075. Id. at 6.

<sup>7</sup> See NRC Staff's Response to Entergy's Motion for Clarification Regarding the Timing of Adjudicatory Submissions Related to Entergy Letter NL-13-075 (July 5, 2013).

NRC Staff reviews Entergy's completed SAMA analyses, and thus it is the Staff's issuance of its review of NL-13-075 that triggers the adjudicatory submission deadlines, not the issuance of NL-13-075 in and of itself. Thus, adjudicatory submissions based on NL-13-075 are due no later than 60 days after the Staff issues its draft FSEIS supplement or an equivalent document discussing its review of NL-13-075, or alternatively, no later than 60 days after the NRC Staff notifies the parties that it will not issue a written evaluation of NL-13-075 in any form.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
July 9, 2013

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Entergy's Motion Clarification)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara I. Sola]  
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