

July 18, 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 SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR CONTENTION NYS-16/16A/16B

6.117 In accordance with 10 C.F.R. § 2.1209, and the Atomic Safety and Licensing Board's ("Board") Orders of January 15 and July 9, 2013, the staff of the U.S. Nuclear Regulatory Commission ("Staff") submits its Supplemental Proposed Findings of Fact and Conclusions of Law on the State of New York's ("New York") Contention 16/16A/16B ("NYS-16B"). These findings address Exhibits ("Exs.") NYS000476,¹ ENT000608, and the "State of New York's Supplemental Proposed Findings of Fact and Conclusions of Law for Contention NYS-16/16A/16B ('NYS-16B')" ("NYS Supplemental PFF on NYS-16B"), filed on May 17, 2013.

Introduction

6.118 On June 12, 2013, the Board admitted Exs. NYS000476 and ENT000608. New York's exhibit contained a portion of Entergy's submittal to the NRC of its completed engineering project cost estimates of May 6, 2013, while Entergy's submission contained additional analysis regarding the cost of implementing the potentially cost-beneficial Severe Accident Mitigation Alternatives ("SAMA") for Indian Point Units 2 and 3 ("IP2" and "IP3") .

¹ Ex. NYS000476 is an excerpt of Ex. ENT000608, NL-13-075, License Renewal Application-Completed Engineering Project Cost Estimates for SAMAs Previously Identified as Potentially Cost-Beneficial (May 6, 2013). The Staff's supplemental findings will reference the full document admitted as ENT000608 rather than New York's partial excerpt from that document.

6.119 Based on its additional analysis, Entergy determined that six of the 22 SAMAs that it had previously identified as potentially cost-beneficial would not be cost-beneficial under the additional implementation cost analysis. Ex. ENT000608, Attachment 1, at 4-5. Based on that additional analysis, Entergy also determined that it will implement four of the potentially cost-beneficial SAMAs including: (1) IP3-052, (2) IP3-053, and (3/4) the Main Steam Safety Valve gagging devices for both Unit 2 and Unit 3. *Id.* at 9. Entergy also indicated that it was reserving a decision on six other potentially cost-beneficial SAMAs because they are “potentially impacted by ongoing Fukushima action items” *Id.* at 11. In addition, Entergy deferred a final decision on these SAMAs “to avoid any potential conflicts or redundancies that could arise between implementation of the [Fukushima] Order and these SAMAs and to allow for consideration lessons learned and risk reduction from implementation of the Order.” *Id.*

6.120 Of the four SAMAs that Entergy has committed to implement, one, IP3-052, has been completed. *Id.* at 9. The other three are scheduled to be completed by April 30, 2014, for IP3-053 and August 31, 2014, for the IP2/IP3 gagging device(s). *Id.*

6.121 In its Supplemental Proposed Findings, New York asserts that the Board should find that accounting for the “census undercount will materially alter the SAMA analysis conclusions.” NYS Supplemental PFF on NYS-16B at 6. New York bases this assertion on Entergy’s submission, but fails to address how New York’s assertion affects the validity of the Staff’s Final Supplemental Environmental Impact Statement (“FSEIS”), Ex. NYS000133. In this regard, the Staff’s FSEIS concluded that the SAMAs that New York identifies as being potentially affected by allegedly understated population estimates are potentially cost-beneficial. See FSEIS, Ex. NYS000133I, at G-36. New York does not assert that Staff’s conclusion is incorrect, or that the Staff’s FSEIS is not reasonable. The actual issue before the Board is the reasonableness of the Staff’s analysis and conclusions as reflected in the FSEIS; Entergy’s determination that certain SAMAs are no longer cost-beneficial do not alter the Staff’s FSEIS conclusion that those SAMAs are cost-beneficial. For the reasons discussed below and in the

Staff's Proposed Findings and Reply Findings, the Board should find that the FSEIS satisfies the agency's obligations under the National Environmental Policy Act ("NEPA") and NRC regulations at 10 C.F.R. Part 51. Thus, the Board should resolve NYS-16B in favor of the Staff.

Findings of Fact

6.122 The Staff's witnesses explained that the Staff reviewed Entergy's population estimates, performed additional independent verification of the population estimates using two different techniques, and determined that Entergy's population estimates were reasonable.² New York does not explain how these newly admitted exhibits would alter Dr. Sheppard's conclusions that the Sandia's independent verification on of the population performed on behalf of the Staff is consistent with methods he would have employed. Tr. at 2437. New York's Supplemental Findings do not present any challenge to the adequacy of the Staff's analysis as reflected in its FSEIS.

6.123 Entergy's Supplemental Engineering Cost Estimates provided more detailed cost estimates for the 22 potentially cost-beneficial mitigation alternatives. Ex. ENT000608, Attachment 1 at 3, 10. As a result of the additional cost estimates, Entergy concluded that six of the potentially cost-beneficial SAMAs were no longer cost-beneficial. Ex. *Id.* at 4-5. New York's Supplemental Proposed Findings only dispute Entergy's conclusions with respect to two of the six SAMAs, namely IP SAMA 021 and IP SAMA 053 that are applicable to Indian Point, Unit 2. See NYS Supplemental PFF for Contention NYS-16B at 4-5. New York argues that Dr. Sheppard's concerns as reflected in Entergy's sensitivity analysis³ could render IP SAMA 021 and IP SAMA 053 potentially cost-beneficial using Entergy's new cost estimates. *Id.*

² See NRC Staff's Reply To State Of New York's Proposed Findings Of Fact And Conclusions Of Law For Contention NYS-16/16A/16B ("NYS-16B") ("Staff Reply PFF") at 20, and testimony cited therein.

³ Entergy's second sensitivity analysis included all of the population identified by Dr. Sheppard as potentially missing from Entergy's population estimate as a bounding analysis. See NRC Staff's Proposed Findings Of Fact And Conclusions Of Law Part 6: Contention NYS-16B (SAMA Analysis Population Estimate) at 20.

6.124 New York's argument misses the mark. The issue before the Board is not the validity of Entergy's cost's estimates as reflected in the most recent submittal or even Entergy's conclusions regarding which SAMAs are potentially cost-beneficial. The issue presented for decision in Contention NYS-16B is whether the Staff's analysis as reflected in FSEIS is reasonable. New York's Supplemental Proposed Findings, which rely on Entergy's completed cost estimates, raise no challenge to the Staff's conclusions that IP SAMA 021 and IP SAMA 053 are potentially cost-beneficial. Contrary to New York's Supplemental Proposed Findings, the Staff's FSEIS findings already conclude that IP SAMA 021 and IP SAMA 053 are potentially cost-beneficial – as New York, itself, insists. FSEIS, Ex. NYS000133I, at G-36. Thus, New York's argument presents no actual challenge to the Staff's FSEIS.

6.125 In sum, nothing in New York's Supplemental Proposed Findings alters or contradicts the reasonableness of the Staff's conclusions regarding the identity of potentially cost-beneficial SAMAs as set forth in the Staff's FSEIS. New York has failed to demonstrate the Staff's analysis in its FSEIS is unreasonable, and Contention NYS-16B should therefore be resolved in favor of Entergy and the Staff.

Conclusion

6.126 As explained in the Staff's Testimony and its Proposed Findings, the Staff's FSEIS reflects a reasonable and relatively conservative population estimate for the 50-mile radial area surrounding Indian Point. The Staff verified the adequacy of Entergy's population estimate using two independent methods that confirmed the reasonableness of that estimate. New York has not raised any reasonable basis to conclude that the population estimates used by Entergy in its SAMA analysis and discussed in the Staff's FSEIS are unreasonable. Accordingly, the Board finds that the Staff has satisfied its SAMA-related obligations under NEPA and 10 C.F.R. Part 51.

Respectfully submitted

/Signed Electronically by/

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Dated at Rockville, Maryland
this 18th day of July 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 SUPPLEMENTAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR CONTENTION NYS-16/16A/16B ("NYS-16B")" dated July 18, 2013, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 18th day of July, 2013.

/Signed (electronically) by/

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