

August 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 18<sup>TH</sup> 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 18<sup>th</sup> monthly status report to the Board.

1. FSEIS Supplement. As stated in Staff Counsel's letter to the Board of June 21, 2013,<sup>1</sup> 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");<sup>2</sup> copies of the FSEIS Supplement were transmitted to the Board and parties on June 21, 2013. Pursuant to the Board's Order of July 9, 2013, new and amended contentions arising from the FSEIS Supplement are due to be filed on or before August 20, 2013.<sup>3</sup>

---

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

<sup>2</sup> "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38, Regarding Indian Point Nuclear Generating Units Nos. 2 and 3," NUREG-1437, Supp. 38, Vol. 4 (June 2013).

<sup>3</sup> "Order (Establishing Deadline for Motions for New and Amended Contentions)" (July 9, 2013), at 2.

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.’”<sup>4</sup> In admitting this contention, the Board stated as follows:

Specifically, Riverkeeper has raised a question of whether the existing FSEIS fulfills the NRC’s hard look obligations under NEPA. Moreover, while the remedy Riverkeeper requests is the supplementation of the FSEIS, a resolution of the question whether a supplemental FSEIS is necessary is a matter for adjudication. Therefore, Riverkeeper’s allegation that the NRC Staff’s failure to take into account NMFS’s BiOp violates the agency’s duty to conduct a hard look at the environmental impacts of the proposed action raises a genuine dispute of law pursuant to 10 C.F.R. § 2.309(f)(1)(vi).<sup>5</sup>

The FSEIS Supplement, which the Staff issued following the conclusion of consultations with NMFS, summarizes those consultations and fully considers NMFS’s Biological Opinion and Incidental Take Statement (“ITS”) in evaluating the impacts of IP2/IP3 license renewal on endangered and threatened species.<sup>6</sup> Further, the Staff noted that “[i]f the NRC renews the IP2 and/or IP3 licenses, compliance with the terms and conditions of the [2011] biological opinion (as later revised) will be required, as appropriate,” and “license renewal for IP2 and IP3 would be subject to the terms and conditions of the ITS as stated by NMFS.”<sup>7</sup>

---

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

<sup>5</sup> *Id.*, slip op. at 70 (emphasis added; footnote omitted).

<sup>6</sup> See FSEIS Supplement, Section 4, at 23-30. Based on its consideration of the available information, including NMFS’s Biological Opinion concerning the shortnose sturgeon and Atlantic sturgeon, the Staff concluded that “the level of impact for aquatic special status species would be SMALL.” *Id.* at 30.

<sup>7</sup> *Id.* at 27 and 30.

On July 17, 2013, Entergy Nuclear Operations, Inc. (“Entergy” or “Applicant”) filed a motion to dismiss Contention RK-EC-8 as moot.<sup>8</sup> Answers to that motion are due to be filed by August 6, 2013.<sup>9</sup> On July 26, 2013, however, Riverkeeper filed a motion (a) to hold the Applicant’s motion in abeyance pending a Board ruling on any amended contention that Riverkeeper may file, or (b) to extend the deadline for answers to the Applicant’s motion until August 30, 2013.<sup>10</sup> Answers to Riverkeeper’s motion are due by August 5, 2013.<sup>11</sup>

3. SER Supplement 2. As stated previously,<sup>12</sup> the Staff plans to issue a supplement (Supplement 2) to its Safety Evaluation Report (“SER”) related to license renewal of IP2/IP3. As the Staff has stated, the Staff expects to address therein the information provided in the Applicant’s responses to Staff requests for additional information (“RAIs”) concerning various matters 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 issues,<sup>13</sup> the Staff is currently unable to

---

<sup>8</sup> “Entergy Motion to Dismiss Riverkeeper Contention RK-EC-8 (Endangered and Threatened Aquatic Species as Moot)” (July 17, 2013).

<sup>9</sup> “Scheduling Order” (July 1, 2010), at 11.

<sup>10</sup> “Riverkeeper, Inc. Motion to Hold Entergy’s Motion to Dismiss RK-EC-8 (Endangered Species) in Abeyance or for Extension of Time to Respond” (July 26, 2013).

<sup>11</sup> The Applicant filed an answer in opposition to Riverkeeper’s motion earlier today. See “Entergy’s Answer Opposing Riverkeeper, Inc.’s Motion to Hold Entergy’s Motion to Dismiss RK-EC-8 (Endangered Species) in Abeyance or for Extension of Time to Respond” (Aug. 1, 2013).

<sup>12</sup> See “NRC Staff’s 17th Status Report in Response to the Atomic Safety and Licensing Board’s Order of February 16, 2012” (July 1, 2013) (“17<sup>th</sup> Status Report”), at 2.

<sup>13</sup> 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 17<sup>th</sup> Status Report at 3; NRC Staff’s 16th Status Report (June 3, 2013), at 2-3. At present, the Staff understands that EPRI expects to issue those documents by the end of August, 2013.

provide a reliable projected date for issuance of the SER Supplement. The Staff will provide further information to the Board regarding this matter as it becomes available.

4. Track 2 Safety Issues. As stated previously,<sup>14</sup> 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 noted previously,<sup>15</sup> 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."<sup>16</sup> Following issuance of the Court of Appeals' decision, the Intervenor 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 Board ordered that all other pleadings concerning these contentions be held in abeyance, pending further order.<sup>17</sup>

---

<sup>14</sup> See, e.g., NRC Staff's 17th Status Report, at 3.

<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> *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).

<sup>17</sup> "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.

6. CZMA Issues. As stated previously,<sup>18</sup> on June 12, 2013, the Board denied the Applicant's motion,<sup>19</sup> and the State of New York's ("New York") cross-motion,<sup>20</sup> 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").<sup>21</sup> 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. 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 also stated previously,<sup>22</sup> 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 previously identified as potentially cost-beneficial.<sup>23</sup> In its Board notification, the Applicant

---

<sup>18</sup> NRC Staff's 17th Status Report, at 4.

<sup>19</sup> "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).

<sup>20</sup> "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").

<sup>21</sup> "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).

<sup>22</sup> NRC Staff's 17th Status Report, at 4-5.

<sup>23</sup> 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).

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)].”<sup>24</sup> The Applicant’s submittal thus has the potential to affect litigation of Consolidated Contention NYS 35/36. On July 9, 2013, the Board ruled that “adjudicatory submissions based on NL-13-075 [Entergy’s letter of May 6, 2013] 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.”<sup>25</sup> In this regard, the Staff has not yet decided whether it will issue a supplement to its FSEIS to address the new information; the Staff expects to provide further information regarding this matter in its next status report.

8. Contention NYS-16B. On July 9, 2013, the Board denied the Staff’s motion for partial reconsideration of the Board’s Order of June 12, 2013, as it pertains, *inter alia*, to Contention NYS-16B,<sup>26</sup> but afforded the Staff an opportunity to file supplemental proposed findings of fact and conclusions of law on Contention NYS-16B, in response to a June 10, 2013 filing by New York.<sup>27</sup> The Staff filed its supplemental proposed findings of fact and conclusions of law on this contention on July 18, 2013.<sup>28</sup>

---

<sup>24</sup> *Id.* at 1 and 2.

<sup>25</sup> “Order (Granting Entergy’s Motion [for] Clarification)” (July 9, 2013), at 2.

<sup>26</sup> “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..

<sup>27</sup> “Order (Denying Motions for Reconsideration; Granting Entergy’s Motion)” (July 9, 2013), at 4.

<sup>28</sup> “NRC Staff’s Supplemental Proposed Findings of Fact and Conclusions of Law for Contention NYS-16/16A/16B” (July 18, 2013).

9. Contention NYS-5. In its Order of July 9, 2013, the Board also denied the Staff's and Applicant's motions for partial reconsideration of its ruling of June 12, 2013, insofar as it granted New York's motion of June 10, 2013, seeking to supplement the record on Contention NYS-5, but afforded the Staff and Applicant an opportunity to respond to New York's motion.<sup>29</sup> Submittals in response to New York's motion were filed by the Staff and Applicant on July 22, 2013.<sup>30</sup>

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/**

Sherwin E. Turk  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop – O-15D21  
Washington, DC 20555  
Telephone: (301) 415-1533  
E-mail: [sherwin.turk@nrc.gov](mailto:sherwin.turk@nrc.gov)

Dated at Rockville, Maryland  
this 1<sup>st</sup> day of August 2013

---

<sup>29</sup> "Order (Denying Motions for Reconsideration; Granting Entergy's Motion)" (July 9, 2013), at 3-4.

<sup>30</sup> See (1) "Applicant's Supplemental Filing Related to Contention NYS-5" (July 22, 2013), and proposed exhibits **ENT000609 – ENT000614**, attached thereto; and (2) "NRC Staff's Answer to State of New York's Motion for Leave to Submit Four Additional Exhibits on Contention NYS-5 (Buried Piping and Tanks)" (July 22, 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. 50-247/286-LR  
 )  
(Indian Point Nuclear Generating )  
Units 2 and 3) )

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S 18<sup>TH</sup> STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated August 1, 2013, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 1<sup>st</sup> day of August, 2013.

**/Signed (electronically) by/**

Sherwin E. Turk  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop – O-15D21  
Washington, DC 20555  
Telephone: (301) 415-1533  
E-mail: [sherwin.turk@nrc.gov](mailto:sherwin.turk@nrc.gov)