

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

**BEFORE COMMISSIONERS
KRISTINE L. SVINICKI,
WILLIAM D. MAGWOOD, IV,
GEORGE APOSTOLAKIS, AND
WILLIAM C. OSTENDORFF AND
CHAIRMAN ALLISON M. MACFARLANE**

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In re: Docket Nos. 50-247-LR; 50-286-LR

License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. June 2, 2014
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**STATE OF NEW YORK
REPLY IN SUPPORT OF PETITION FOR REVIEW
OF ATOMIC SAFETY AND LICENSING BOARD'S
APRIL 1, 2014 DECISION DENYING THE STATE'S MOTION
TO REOPEN THE RECORD AND FOR RECONSIDERATION OF
THE BOARD'S NOVEMBER 27, 2013 PARTIAL INITIAL DECISION
CONCERNING CONSOLIDATED CONTENTION NYS-12C**

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April 1 Order	<i>Entergy Nuclear Operations, Inc.</i> (Indian Point Nuclear Generating Units 2 & 3), Order (Denying New York’s Motion to Reopen the Record; Setting Deadline for New or Amended Contention) (Apr. 1, 2014) (ML14091A319)
April 28, 2014 Petition	State of New York Petition for Review of Atomic Safety and Licensing Board’s April 1, 2014 Decision Denying the State’s Motion to Reopen the Record and for Reconsideration of the Board’s November 27, 2013 Partial Initial Decision Concerning Consolidated Contention NYS-12C (ML14118A519)
Board	Atomic Safety and Licensing Board
Entergy Answer	Applicant’s Answer Opposing New York State’s Petition for Review of April 1, 2014 Board Order Denying Reconsideration of LBP-13-13 (May 23, 2014) (ML14143A411) ¹
February 14, 2014 Petition	State of New York Petition for Review of Atomic Safety and Licensing Board Decision LBP-13-13 With Respect to Consolidated Contention NYS-12C (Feb. 14, 2014) (ML14045A412)
FSEIS	Final Supplemental Environmental Impact Statement NUREG-1437, <i>Volumes 1-3: Supplement 38: Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 – Final Report</i> (Dec. 2010) (NRC000004) ² (NYS00133A-J)
GEIS	NUREG-1437, <i>Generic Environmental Impact Statement for License Renewal of Nuclear Plants Vol. 1-2</i> (May 1996) (NRC000002) ³ (NYS00131A-I)
Ghosh Aff.	Affidavit of S. Tina Ghosh in Support of NRC Staff’s Opposition to State of New York’s Motion to Reopen the Record and for Reconsideration on Contention NYS-12C (Dec. 23, 2013) (ML13357A775 package).

¹ Entergy submitted an erratum to its answer on May 28, 2014 (ML14148A483).

² NRC000004 is a one-page exhibit that “[i]ncorporates New York Exhibit NYS000133A-J.”

³ NRC000002 is a one-page exhibit that “[i]ncorporates New York Exhibit NYS00131A-I.”

GLOSSARY OF TERMS, ACRONYMS, & ABBREVIATIONS

Lemay Decl.	Declaration of François Lemay in Support of the State’s Motion to Reopen the Record and for Reconsideration of NYS-12C (Jan. 22, 2014) (ML14022A273)
Lemay Rebuttal Test.	Pre-filed Rebuttal Testimony of NYS Expert Lemay on Contention NYS-12C (Jun. 29, 2012) (NYS000420)
MACCS2	MELCOR Accident Consequence Code Systems Version 2
MELCOR	Methods for Estimation of Leakages and Consequences of Releases
NCF	Non-Containment Failure
NEPA	National Environmental Policy Act
NRC	Nuclear Regulatory Commission
NRC Staff Proposed Findings	NRC Staff Proposed Findings of Fact and Conclusions of Law Part 5: Contention NYS-12C (Severe Accident Mitigation Alternatives Analysis Decontamination and Cleanup Costs) (March 22, 2013) (ML13081A698)
NRC Staff Test.	Pre-filed Testimony of NRC Staff Witnesses Bixler, Ghosh, Jones, and Harrison on NYS-12/16 (Mar. 30, 2012) (NRC000041)
NUREG/CR-3673	NUREG/CR-3673, <i>Economic Risks of Nuclear Power Reactors Accidents</i> (May 1984) (NRC000058)
NYS Proposed Findings	State of New York’s Proposed Findings of Fact and Conclusions of Law for Contention NYS-12/12A/12B/12C (Mar. 22, 2013) (ML13081A757)
NYS Reconsideration Motion	State of New York Motion to Reopen the Record and For Reconsideration on Contention NYS-12C (Dec. 7, 2013) (ML13341A002 (package with attachments))
NYS Reconsideration Reply	State of New York Reply in Support of Motion to Reopen the Record and for Reconsideration of Contention NYS-12C (Jan. 22, 2014) (ML14022A275)
NYS-12C	Consolidated Contention NYS-12/12A/12B/12C
OECR	Offsite Economic Cost Risk

GLOSSARY OF TERMS, ACRONYMS, & ABBREVIATIONS

Partial Initial Decision	<i>Entergy Nuclear Operations, Inc.</i> (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 N.R.C. ___, slip op. (Nov. 27, 2013) (ML13331B465).
SAMA	Severe Accident Mitigation Alternatives
Sandia	Sandia National Laboratories
Sipos Decl.	Declaration of Assistant Attorney General John Sipos in Support of State of New York's Motion to Reopen the Record and for Reconsideration of Board Ruling LBP-13-13 on Contention NYS-12C (Dec. 7, 2013) (Attachment 1, ML13341A003)
SOARCA	NUREG-1935, <i>State-of-the-Art Reactor Consequence Analysis Report</i>
Spent Fuel Pool Consequence Study	Consequence Study of a Beyond Design Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark 1 Boil Water Reactor, ML13256A342 (final) October 2013, and ML13133A132 (draft) June 2013 (Attachment 7 to State's Motion to Reopen the Record and for Reconsideration of NYS-12C)
Staff Answer	NRC Staff's Answer to the State of New York's Petition for Review of the Atomic Safety and Licensing Board's Order of April 1, 2014 (May 23, 2014) (ML14143A415)
TIMDEC	MACCS input parameter for the time required for completion of decontamination levels
Tr.	Transcript of Evidentiary Hearing before Atomic Safety and Licensing Board, Docket Nos. 50-247-LR & 50-286-LR, ASLBP No. 07-858-03-LR-BD01

Pursuant to 10 C.F.R. § 2.341, the State of New York submits this reply to Entergy and Staff's May 23, 2014 answers to the State's petition to review the Atomic Safety and Licensing Board's April 1, 2014 Order denying the State's December 7, 2013 motion to reopen the record and for reconsideration of the Board's November 27, 2013 Partial Initial Decision.¹

INTRODUCTION

Although the Board found that the State raised a "significant issue," it erred in ruling that the NRC Staff's TIMDEC inputs in another severe accident study were not material. Just one month after its witnesses testified that 60 and 120 day inputs were reasonable and the only inputs that had been used for decades, Staff used 365 day decontamination time inputs to the MACCS2 computer code to calculate severe accident impacts. Staff failed to correct its testimony and briefs or disclose in this proceeding its use of 365 days. In the Partial Initial Decision, the Board upheld the 60/120 day decontamination time input values based on Staff's testimony, resulting in an underestimation of severe accident costs for Indian Point and a flawed mitigation analysis. Staff's use of 365 days in lieu of 60/120 days materially altered the record here.

ARGUMENT

1. **Having Found That the State Raised a "Significant Issue," the Board Erred in Ruling That the Issue Was Not Material**

A. Staff Changed Its 30-Year History of Repeating the Same Decontamination Times

Staff unequivocally stated that the 60 and 120 day TIMDEC values "have a long history of use" and "continue to be used" in its March 2013 post-hearing submission to the Board — even though four months earlier its own witnesses had used 365 day TIMDEC values for severe accident MACCS2 runs. *Compare* NRC Staff Proposed Findings ¶ 5.41 (March 22, 2013)

¹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contentions) (Apr. 1, 2014) (ML14091A319) (April 1 Order); Partial Initial Decision, *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 N.R.C. ___, slip op. (Nov. 27, 2013) (ML13331B465).

(ML13081A698) *with Ghosh Aff. ¶ 3* (confirming that the Consequence Study used 365 day TIMDEC inputs).² Contrary to NRC Staff’s claim (Staff Answer at 17-18), the State’s filings on reconsideration have included record citations showing the unbroken repetition of 60 and 120 day values.³ Staff’s approval of the 60 and 120 day input values is all the more implausible given its actions one month after the evidentiary hearing on NYS-12C — when it used 365 day input values for a MACCS2 analysis of the offsite radiation releases of various spent fuel pool severe accident scenarios, which are relevant to the accident scenarios modeled for Indian Point.

Despite “find[ing] that New York’s motion addressed a significant issue” (April 1 Order at 2), the Board erred by not reopening NYS-12C and reconsidering its ruling. NRC Staff failed to disclose its about-face after telling the Board it had been “examining the decontamination times for over 37 years” and always used 60 and 120 days or an average of 90 days. NRC Staff Test. at 89-90. Allowing such prejudicial behavior on the part of Staff — especially after it failed to disclose in this proceeding its MACCS2 runs using 365 days — when the Board determined the issue is “significant” constitutes “clear error,” “manifest injustice” and meets any other standard referenced by Staff or Entergy.⁴

B. The Consequence Study Is Relevant to the Indian Point Analysis

The State submitted ample evidence showing that the Consequence Study’s decontamination times are relevant to the Indian Point SAMA analysis. The fact that the Consequence Study examined severe spent fuel pool accidents does not mean it “has nothing to

² Staff submitted the Ghosh Affidavit to respond to the State’s reconsideration motion (ML13357A775).

³ See Sipos Decl. ¶¶ 16-18 (Dec. 7, 2013) (Attach. 1, ML13341A003); April 28, 2014 Petition at 6-8.

⁴ Staff and Entergy conflate and confuse the many applicable legal standards for this petition. These include standards governing (1) motions for reconsideration, (2) motions to reopen, (3) petitions for Commission review of a Board decision, and (4) NEPA. The State notes that most of the case law cited by Entergy and Staff address attempts to reopen the record to file 11th hour new contentions and, thus, those cases are irrelevant to the State’s motion. See Staff Answer at 8 and cases cited therein.

do with severe reactor accidents” as Entergy argues (Entergy Answer at 11). To the contrary, using the MACCS2 code, the Consequence Study modeled accident scenarios that are comparable to the Indian Point SAMA analysis’ modeled range of severe accidents, *i.e.* release categories.⁵ All severe accidents, by definition, are challenging, low probability events. *See* NRC000002/NYS00131C, NUREG-1437 GEIS (May 1996) at 5-1 (A severe accident is one “involving multiple failures of equipment or function and therefore, whose likelihood is generally lower than design-basis accidents but whose consequences are much higher.”). The Consequence Study’s “frequency of occurrence of 10^{-7} per reactor year” (Ghosh Aff. ¶ 3) in on par with the frequencies⁶ of several of the accident scenarios, *i.e.* releases, examined by Entergy in its Indian Point SAMA analysis. ENT000464 at Tables 5, 6.

Both the Consequence Study accident scenarios and the Indian Point accident scenarios have associated source terms, contaminated land areas, and affected population. Lemay Decl. ¶ 8. As the State explained, all of these factors can be compared using the number of workers required to decontaminate following the Consequence Study accident scenarios with the number of workers required to decontaminate following the Indian Point accident scenarios. *Id.* The State created a chart that compares the worker values for all accident scenarios (not just “EARLY HIGH”). *Id.* This chart shows the similarities between the Consequence Study accidents and the Indian Point SAMA accidents (*i.e.*, release categories). *Id.*

C. The State Did Not Ignore “Averaging”

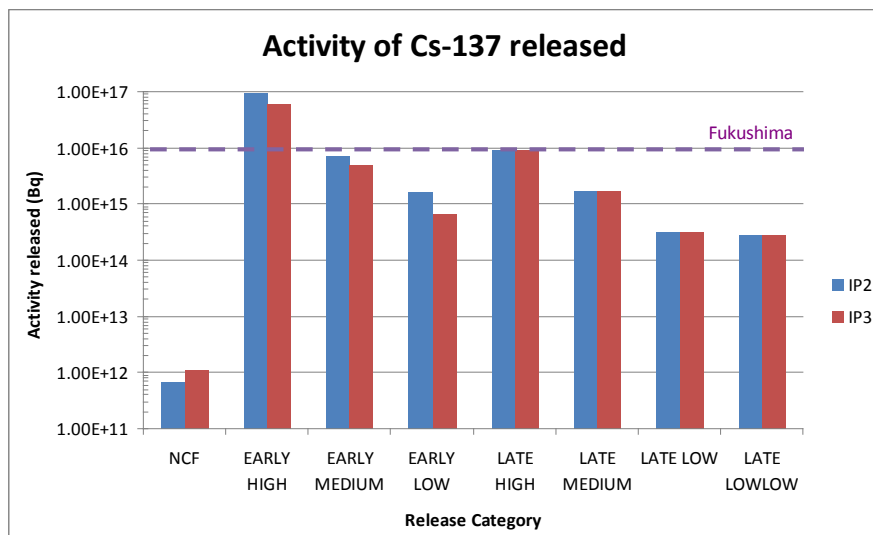
The Consequence Study’s TIMDEC inputs constitute additional evidence on a matter

⁵ The applicant selects eight different categories of severe accidents to model, called release categories. NYS000420 Lemay Rebuttal Test. at 11; Tr. 1905:2-6 (Teagarden) (“We have eight bins, so to speak, release categories postulated as part of the SAMA analysis for Indian Point of different types of releases that could occur to the environment.”).

⁶ The frequency of a release category represents the likelihood that the release category is postulated to occur within one year. Essentially, frequency is a probability expressed on a per year basis.

already considered by the Board — namely, whether 60 and 120 day decontamination times are too low. The SAMA analysis is an analysis of “severe accidents,” not “worst case scenarios.” It is carried out as part of NRC Staff’s obligation to take a hard look at “impacts which have catastrophic consequences, even if their probability of occurrence is low.” 40 C.F.R. § 1502.22(b)(4); *see also* Part 51, Subpart A, Appendix B, Table B-1; *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1028, 1030-34 (9th Cir. 2006), *cert. denied*, 549 U.S. 1166 (2007) (explaining the difference between a “worst case scenario” and NEPA’s current requirements).

As the State’s expert explained, the MACCS2 input values should be “be best estimate[s] appropriate for the release category we’re trying to simulate.” Tr. 1937:18-21 (Lemay). Staff and Entergy agreed. Tr. 1937:11-12 (Bixler) (use “the best value that you think you have for that particular parameter.”); Tr. 1937:2-3 (Teagarden). Although a no containment failure (NFC) accident was one of the release categories modeled by Entergy, all other categories had larger radiation releases, with EARLY HIGH exceeding Fukushima, and EARLY MEDIUM and LATE HIGH having releases similar to Fukushima:



NYS000420 Lemay Rebuttal Test. at 12 (using data from Entergy’s MACCS2 input and output

files as compared to Fukushima release data); *see also* Tr. 2184:6-2185:5 (Lemay).

Staff and Entergy’s criticisms of the State overlook the mechanics of the SAMA analysis:

- The applicant runs the MACCS2 code for each release category.
- The MACCS2 code outputs offsite economic costs for each release category.
- The applicant weights each release category’s costs by that category’s frequency.
- The applicant “averages” the frequency weighted costs for each of the eight release categories to determine the total costs (OECR) used in the SAMA analysis.

See generally NYS Petition at 27-30; *see also* Tr. 2191:20-22 (Teagarden) (“MACCS does not actually multipl[y] the frequency, you do that yourself at the end.”). As the State has explained, some of the eight modeled release categories have a relatively small economic impact, while others have a relatively large economic impact. *See, e.g.*, Lemay Decl. ¶ 10. Nevertheless, Staff approved 60 day (light decontamination) and 120 day (heavy decontamination) values for *all* accident scenarios.

Release Category (in ascending order based on Offsite Economic Cost Risk)	Entergy/NRC Staff TIMDEC Values
NCF	60 days, 120 days
LATE LOWLOW	60 days, 120 days
LATE LOW	60 days, 120 days
EARLY LOW	60 days, 120 days
LATE MEDIUM	60 days, 120 days
EARLY MEDIUM	60 days, 120 days
LATE HIGH	60 days, 120 days
EARLY HIGH	60 days, 120 days

The State demonstrated that using 365 day time inputs for the Indian Point SAMA analysis would almost double the costs (OECR).⁷ *Id.* ¶ 12. This is a material difference. By using

⁷ Doubling of costs occurs both when using 365 day inputs for all the release categories and when using 365 day inputs for release categories with the highest contribution to total OECR (EARLY HIGH, EARLY MEDIUM, LATE HIGH, LATE MEDIUM) and continuing to use 60 and 120 days for the others (NCF, EARLY LOW, LATE LOW, LATE LOW LOW). Lemay Decl. ¶ 12.

unreasonably short decontamination times for the more severe accidents at Indian Point, Staff significantly underestimates the total off-site economic cost risk (OECR). *Id.* ¶ 9.

Entergy and Staff incorrectly argue that “materiality” can only be shown if an alleged deficiency will make an additional SAMA cost effective. The Commission refers to this type of “materiality” in *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 N.R.C. 301 (2012)), which cites *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. 287, 317 (Mar. 26, 2010). *Pilgrim* CLI-10-11 does not cite any legal support for this proposition; nor could it, because the standard under NEPA is not materiality. The correct standard is whether the FSEIS qualifies as an “adequate compilation of relevant information” that can “provide the basis for an informed evaluation or a reasoned decision.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 701 F.2d 1011, 1029-30 (2d Cir. 1983).

Moreover, in *Pilgrim* CLI-10-11, the applicant (Entergy) put forth evidence that changing the parameters cited by interveners would increase the SAMA costs by less than four percent, but the benefit would have to increase by more than 100 percent to make any additional SAMAs cost effective. *Pilgrim* CLI-10-11 at *6-7. Here, the State’s evidence shows a much greater impact because using 365 day TIMDEC values doubles SAMA costs. Lemay Decl. ¶ 12. Neither Entergy nor Staff has challenged the State’s MACCS2 runs, which are sufficient to meet the State’s burden on this contention — to bring forth evidence demonstrating that the SAMA analysis for Indian Point is unreasonable. *See La. Power & Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 N.R.C. 1076, 1093 (1983) (citing *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 A.E.C. 331, 345 (1973)).

As further evidence in this proceeding, the State pointed out that only an 11% increase in costs is required to render one more mitigation measure cost-beneficial. April 28, 2014 Petition

at 16. The 11% comes from Entergy's efforts to analyze the effect that population input flaws would have on the required SAMA analysis in the context of NYS-16B.⁸ At the hearing, the Board stated that the State could use this evidence in NYS-12C. Tr. 2338:10-20 (J. McDade).⁹

Entergy's witnesses did state that they would need to conduct additional analysis including MACCS2 runs to determine the exact effect of the SAMA cost-benefit analysis (Tr. 2525:20-2527:21 (J. McDade/Potts/Teagarden/Liberatore)), but neither Entergy nor Staff performed such an analysis, and the Commission should disregard Entergy's counsel speculation on the matter. Entergy Answer at 18-19.¹⁰ The bottom line is that a doubling of costs — based on the 365 day inputs selected by Staff in the Consequence Study — is sufficient to require Staff to review the Indian Point decontamination time inputs in a supplemental NEPA analysis.¹¹

D. A Single Sentence in NUREG/CR-3673 Does Not Justify 60 and 120 Day Inputs

Staff and Entergy maintain that NUREG/CR-3673 along with repeated use of 60 and 120 days is sufficient to justify using those values for Indian Point. NUREG/CR-3673 assumes in a single sentence “a mean time to completion of 90 days for the decontamination efforts.”

⁸ See ENT000006 (G. Teagarden, MACCS2 IP2 Population Sensitivity Case, Jan. 2012); ENT000589 (MACCS2 Sensitivity Analysis for NYS-16 Using Dr. Sheppard's Proposed Data, Oct. 9, 2012).

⁹ Staff incorrectly claims that the motion to reopen must be “sufficient to withstand summary disposition” (Staff Answer at 8). As *Private Fuel Storage* explained, “longstanding agency practice holding that a party seeking to reopen a closed record to introduce a new issue (*as opposed to additional evidence on a matter already considered*) must back its claim with enough evidence to withstand summary disposition.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 N.R.C. 345, 348 (2005) (emphasis added). Here, the State submitted further support that was previously unavailable on a matter it already raised in NYS-12C. The State did not run “afoul of [the] prohibition against raising new arguments in a motion for reconsideration” set out in the cases Entergy and Staff cite. See, e.g., *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant ISFSI), CLI-06-27, 64 N.R.C. 399, 402 (2006).

¹⁰ The Commission should also reject the unsupported allegations of Dr. Ghosh cited by Entergy (Entergy Answer at 19). See NYS Proposed Findings ¶¶ 342-352.

¹¹ Nor has the State ignored “conservatism undergirding the IPEC SAMA analysis.” Entergy Answer at 18-19. This “conservatism” rationale was not adopted by the Board, likely because the record does not support a finding that uncertainty factors or the other types of alleged “conservatism” can account for the failure to develop site-specific inputs. See, e.g., NYS Reply Proposed Findings at 15-18.

NRC000058 at 6-25; Tr. 2249:13-15 (Harrison) (the NUREG/CR-3673 authors “just have a sentence that says the mean time to decontamination is 90 days.”). Entergy attempts to assert that NUREG/CR-3673 examined source terms for different accidents, but nothing in NUREG/CR-3673 shows that 90 days represents anything close to an average decontamination time for “numerous postulated accident scenarios” (Decision at 283). There is no time data or even an explanation of any mathematical process to calculate an “average” value based on identifiable data. Attempts to read more into NUREG/CR-3673 are unsupported and should be disregarded.

Likewise, the repetition of 60 and 120 days in NRC’s SOARCA study does not justify their continued use here. SOARCA “does not consider costs associated with a reactor accident.” ENT000455, NUREG-1935, SOARCA Draft Report for Public Comment (Jan. 2012) at 63. Thus, there is no reason to afford any weight to the fact that SOARCA repeats 60 and 120 days, especially when the Consequence Study’s MACCS2 analysis used 365 days.

2. The State’s Motion to Reopen and Reconsider Was Timely

As an initial matter, “the Board . . . did not find the Motion to Reopen untimely, so whether the motion satisfied the timeliness requirements of 10 C.F.R. § 2.326(a)(1) is not at issue now.” *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 N.R.C. 658, 669 n.44 (2008). The State did not receive the native MACCS2 files until November 26, 2013.¹² Sipos Decl. ¶ 6. Following the November 27 Partial Initial Decision, the State timely filed its motion. The draft Consequence Study itself did not mention TIMDEC, and did not make clear that Staff and its Sandia consultants selected a different value than had been used in earlier MACCS2 analyses. Additionally, upon reviewing the draft Consequence Study in

¹² In cases involving computer models, it is appropriate for a party’s experts to have access to the native format files. *See Oxygenated Fuels Ass’n v. Pataki*, 293 F. Supp. 2d 170, 178 (N.D.N.Y. 2003).

July 2013, the State had asked for an extension of time to prepare and submit comments on the draft study in order to identify, contract, and consult with experts. NYS Reconsideration Motion, Attachment B (NYS August 1, 2013 Comment Letter). Staff denied that request. When the State submitted its comment letter on the draft Consequence Study, the State was not aware that Staff and its Sandia consultants (and witnesses in this proceeding) selected and used the 365-day value (expressed as “3.15x10E7”) for the TIMDEC input for the MACCS2 analysis.

3. The State’s Petition Is Consistent with NRC Regulations and the Commission’s Order

The petition is not unauthorized (Entergy Answer at 8; Staff Answer at 5, n.22). First, NRC regulations set out procedures for petitions for review of a “full or partial initial decision” and “any other decision or action by a presiding officer” (10 C.F.R. § 2.341(b)(1)) such as the Board’s April 1 Order. Second, far from containing an “explicit directive” (Entergy Answer at 9), the Secretary Order sought to anticipate the potential “consequence[s] of the Board’s ruling,” which had not yet issued.¹³ Nothing in the Secretary’s Order foreclosed the possibility that the State could exercise its right to file a separate petition for review of an adverse Board decision on reconsideration. Nor did it require that the State amend, withdraw, or revise its petition.

NRC regulations do not provide a procedure for litigants to follow when faced with a deadline for a petition to review a partial initial decision vis-à-vis a pending motion for reconsideration of the same contention.¹⁴ NRC regulations do not provide for amended, withdrawn, or revised petitions for review. Nor do the regulations require consultation with other parties before a petition is filed. Additionally, the State here had no reason to modify its

¹³ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), Order of the Secretary on Behalf of the Commission at 2 (Feb. 28, 2014) (ML14059A539).

¹⁴ The regulations only provide that “[a] petition for review will not be granted as to issues raised before the presiding officer on a pending motion for reconsideration.” 10 C.F.R. § 2.341(b)(6). The regulations do not toll the deadline for filing a petition for review if a motion for reconsideration is pending.

petition for review of the Partial Initial Decision because the Board’s April 1 Order did not modify the Partial Initial Decision. The State’s filing of a separate petition for review of the April 1 Order was necessary to comply with NRC regulations as written and to ensure that its February 14, 2014 Petition for review of the Partial Initial Decision remained timely.

Entergy’s argument that the State’s petition should be denied on “procedural and fairness grounds” rings hollow. By submitting separate answers to each New York petition, both Entergy and Staff had a fair opportunity to submit their views on the State’s petitions, and their combined briefs exceed the State’s page limitations.¹⁵ If any party has suffered prejudice, it has been the State — the use of 365 day TIMDEC values was never disclosed in this proceeding.

CONCLUSION

The Commission should grant review of the Board’s April 1, 2014 Order. In its discretion under 10 C.F.R. § 2.341(c)(2), the Commission should, as it deems appropriate, either require additional briefing or decide the matter, reversing the April 1, 2014 Order.

Respectfully submitted,

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Dated: June 2, 2014

¹⁵ Additionally, the Commission should not accept Staff’s invitation to disregard the State’s incorporation by reference, glossary, and timeline (Staff’s Answer at 2, n.5). It was appropriate for the State to present highlights in the petition itself, but then direct the Commission to more complete information. The glossary and timeline were provided to assist the Commission given the amount of technical jargon and similarly-titled “NUREG” documents that are important to the resolution NYS-12C. Various federal courts have expressed an appreciation for such glossaries, chiding agencies for overuse of acronyms. *See, e.g., Nat’l Ass’n of Regulatory Utility Comm’rs v. DOE*, 680 F.3d 819, 820, n.1 (D.C. Cir. 2012).

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSIONERS

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In re: Docket Nos. 50-247-LR and 50-286-LR

License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. June 2, 2014
-----x

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2014, copies of the State of New York Reply in Support of Petition for Review of Atomic Safety and Licensing Board's April 1, 2014 Decision Denying the State's Motion to Reopen the Record and for Reconsideration of the Board's November 27, 2013 Partial Initial Decision Concerning Consolidated Contention NYS-12C were served electronically via the Electronic Information Exchange on the following recipients:

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Dated at New York, New York
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