

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran

_____)	
In the Matter of)	
ENERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247-LR
(Indian Point Nuclear Generating Units 2 and 3))	50-286-LR
_____)	

CLI-15-3

MEMORANDUM AND ORDER

This proceeding concerns the application of Entergy Nuclear Operations, Inc. to renew the operating licenses of the Indian Point Nuclear Generating Units 2 and 3 for an additional twenty years. The Atomic Safety and Licensing Board recently issued Partial Initial Decision LBP-13-13.¹ We have before us several petitions for review of LBP-13-13 and associated Board decisions. Our decision today addresses only the NRC Staff's and Entergy's requests for review of decisions regarding contention NYS-35/36, an environmental contention challenging

¹ LBP-13-13, 78 NRC 246 (2013). The Board's decision addresses only contentions that the Board earlier designated as "Track 1" contentions, on which a hearing was held in October 2012. See *id.* at 275-76, 278-79. Several "Track 2" contentions remain pending before the Board and will be the subject of a later evidentiary hearing. See *id.*

the Indian Point severe accident mitigation alternatives (SAMA) analysis.² Specifically, Entergy and the Staff seek review of LBP-11-17, the Board's decision dismissing NYS-35/36, and LBP-10-13, the Board's decision admitting the contention.³

NYS-35/36 raised legal and policy questions going to the completeness of the SAMA analysis cost-benefit results and the adequacy of the SAMA analysis conclusions. In LBP-11-17, the Board granted New York's motion for summary disposition of NYS-35/36, agreeing with New York that the SAMA analysis in the Indian Point Final Supplemental Environmental Impact Statement (FSEIS) is deficient as a matter of law.⁴ Entergy and the Staff now seek review of the Board's decisions on NYS-35/36. New York opposes these requests.⁵

We find that the Staff and Entergy petitions each raise at least one substantial question warranting further consideration of the Board's decisions on NYS-35/36. We therefore grant the Entergy and Staff petitions insofar as they challenge the Board's decisions in LBP-11-17 and LBP-10-13.⁶

² See *Applicant's Petition for Review of Board Decisions Regarding NYS-8 (Electrical Transformers), CW-EC-3A (Environmental Justice), and NYS-35/36 (SAMA Cost Estimates)* (Feb. 14, 2014), at 3, 43-60 (Entergy Petition); *NRC Staff's Petition for Review of LBP-13-13 in Part (Contentions NYS-8 and CW-EC-3A), and LBP-11-17 (Contention NYS 35/36)* (Feb. 14, 2014), at 41-59 (Staff Petition). We also issue today a companion order granting review of the State of New York's petitions associated with NYS-12C, another SAMA analysis contention. See CLI-15-2, 80 NRC __ (Feb. 18, 2015) (slip op.).

³ See LBP-11-17, 74 NRC 11 (2011); LBP-10-13, 71 NRC 673 (2010).

⁴ See LBP-11-17, 74 NRC at 25-27.

⁵ See *State of New York's Answer to Entergy and Staff Petitions for Review of Atomic Safety and Licensing Board Decisions LBP-08-13 and LBP-13-13 with Respect to Contention NYS-8 and for Interlocutory Review of LBP-10-13 and LBP-11-17 with Respect to Contention NYS-35/36* (Mar. 25, 2014), at 37-64.

⁶ See Entergy Petition at 43-60; Staff Petition at 41-59. Of note, the Staff recently—after filing its petition—concluded that it will supplement the FSEIS SAMA analysis. See, e.g., *NRC Staff's 36th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012* (Feb. 2, 2015), at 2-3. The Staff stated that the supplement will address Entergy's May 2013 submission of engineering project cost estimates for the mitigation alternatives

(continued . . .)

To aid our review, we request briefing on the following questions. Because the Board in LBP-11-17 found the FSEIS deficient and the Staff is responsible for the FSEIS analysis, we direct our questions below to the NRC Staff.

- 1) The Indian Point SAMA analysis concludes that “risk can be further reduced in a cost-beneficial manner through the implementation of the identified, cost-beneficial SAMAs,” and that “[g]iven the potential for cost-beneficial risk reduction . . . further evaluation of these SAMAs by Entergy is warranted.”⁷

Does the Staff have a process in place to follow up with the licensee to determine which “potentially cost-beneficial” mitigation alternatives ultimately were found by the licensee to be cost-beneficial, if any, and which alternatives, if any, the licensee implemented? If not, explain why follow-up by the Staff is unwarranted.

- 2) The SAMA analysis concludes that “any potentially cost-beneficial SAMAs that do not relate to 10 C.F.R. Part 54 requirements would be considered, to the extent necessary or appropriate, under the agency’s oversight of a facility’s current operating license in accordance with 10 CFR Part 50 requirements.”⁸

Under what circumstances, if any, would the Staff judge a “potentially cost-beneficial” mitigation alternative to warrant further NRC consideration outside of the license renewal review, either via a backfit analysis under 10 C.F.R. § 50.109 or as part of another process? For example, is there any level of reduction in risk metric values—e.g., core damage frequency or large early release frequency—that is or ought to be considered to determine whether a potentially cost-beneficial mitigation alternative warrants additional NRC consideration under Part 50?

identified in the FSEIS as potentially cost-beneficial. See Dacimo, Fred F., Entergy, letter to NRC Document Control Desk, NL-13-075, License Renewal Application—Completed Engineering Project Cost Estimates for SAMAs Previously Identified as Potentially Cost-Beneficial (May 6, 2013) (ML13127A459). The core legal and policy questions raised by NYS-35/36 can, however, be addressed now. Our decision on review will elaborate further on our grounds for granting the petitions. The Staff and Entergy petitions for review before us also contest the Board’s resolution of contentions CW-EC-3A (environmental justice) and NYS-8 (transformers). We will address these claims in a future decision, based upon the briefs and the existing adjudicatory record.

⁷ See Ex. NYS00133I, “Final Report, Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” NUREG-1437, Supplement 38, Vol. 3, regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 (Dec. 2010), App. G at G-49 (FSEIS). The FSEIS is divided into multiple exhibits: NYS00133A-NYS00133J.

⁸ See Ex. NYS00133C, FSEIS, Vol. 1, Main Report at 5-11.

- 3) The Staff states that it does not require license renewal applicants to “finalize” their “SAMA calculations” by including “engineering project costs” in their analyses.⁹

What level of uncertainty does the Staff consider acceptable for the implementation cost portion of the cost-benefit analysis, and why?

- 4) The Staff states that even if the NRC had authority to require implementation of mitigation alternatives for license renewal, “there is no reason to require such SAMAs for environmental protection purposes” because the Generic Environmental Impact Statement (GEIS) for reactor license renewal has already found the “probability-weighted consequences of . . . severe accidents” to be “SMALL” for all plants, and Indian Point Units 2 and 3 fall within “these generic determinations.”¹⁰

Given that the “SMALL” probability-weighted impacts finding applies generically to all plants, why does the Staff expect a SAMA analysis to be a “comprehensive, systematic effort to identify and evaluate [] potential plant enhancements to mitigate” severe accidents?¹¹

The Staff’s initial brief shall not exceed 20 pages, exclusive of title page, table of contents or table of authorities, and shall be filed within 40 calendar days of the date of this order. Entergy and New York may file reply briefs, not to exceed 20 pages, exclusive of title page, table of contents, or table of authorities. Reply briefs are due within 40 calendar days of the initial brief’s filing.

⁹ See Ex. NYS00133I, FSEIS, Vol. 3, App. G at 47-48.

¹⁰ See Staff Petition at 51 n.187.

¹¹ See Ex. NYS000220, “Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supp. 1: Operating License Renewal,” NUREG-1555, Supp. 1 (Oct. 1999), at 5.1.1-7 to 5.1.1-8.

The parties must not introduce any new documents or exhibits; all references shall be limited to submissions already in the record. References to affidavits and exhibits should include page citations.

IT IS SO ORDERED.¹²

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 18th day of February, 2015

¹² Chairman Burns did not participate in this matter.

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR
) and 50-286-LR
(Indian Point Nuclear Generating,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-15-3)** have been served upon the following persons by Electronic Information Exchange.

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