

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

March 31, 2015

MEMORANDUM AND ORDER

(Granting Motions for Leave to File Amendments to
Contentions NYS-25 and NYS-38/RK-TC-5)

Before the Board are motions for leave to supplement two previously admitted contentions, NYS-25 and joint contention NYS-38/RK-TC-5. These motions were filed after the publication of Supplement 2 to NUREG-1930, "Safety Evaluation Report Related to the License Renewal of Indian Point Generating Unit Nos. 2 and 3" (SSER2).¹ We first address the legal standards for amending contentions and then separately discuss each contention and its associated motion.

I. Legal Standards Governing Amended Contention Admissibility

To be admissible, a new or amended contention must satisfy the good cause requirements of 10 C.F.R. § 2.309(c)(1) showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

¹ On June 10, 2013, the Board, in the interest of judicial economy, had directed the intervenors to postpone the filing of new or amended contentions addressing issues related to these contentions until after the publication of SSER2. See Tr. at 4531-35.

In addition, it must also meet the substantive contention admissibility standards set forth in 10 C.F.R. § 2.309(f)(1). Namely, the contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue . . . ; [and]
- (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.²

These rules are "strict by design,"³ and exist to "focus litigation on concrete issues and result in a clearer and more focused record for decision."⁴ The failure of an intervenor to comply with any of these requirements is grounds for the Board not to admit a contention.

II. NYS-25

A. Background

Admitted contention NYS-25 alleges that Entergy's LRA "does not include an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor pressure vessels ("RPVs") and the associated internals."⁵ In its petition to intervene, New York asserted that "embrittlement of the RPVs and their associated internals is one of the most important age-related phenomena . . . [and that] [f]ailure to carefully consider the effects of embrittlement could result in a meltdown of the core"⁶ New York argued that the LRA was deficient because it 1) "[did] not

² 10 C.F.R. § 2.309(f)(1).

³ Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003).

⁴ Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004).

⁵ LBP-08-13, 68 NRC 43, 129, 131 (2008).

⁶ New York State Notice of Intention to Participate and Petition to Intervene (Nov. 30, 2007) at 224 [hereinafter NYS Petition] (quoting NYS Petition, attach. 2, Decl. of Dr. Richard T. Lahey, Jr. ¶ 6) (Nov. 30, 2007) [hereinafter Lahey Decl.]. Specifically, New York's expert Dr. Richard Lahey stated that embrittlement adversely affects the reactor's ability to withstand pressurized thermal shock transients. Lahey Decl. ¶ 12.

include any mention that Entergy performed any age-related accident analyses,” 2) did not include any mention that it “took embrittlement into account when it assessed the effect of transient loads,” and 3) failed “to discuss how embrittled RPVs and RPV internal structures and components would respond to the highly transient severe decompression shock loads associated with a [design basis accident] DBA [loss of coolant accident] LOCA.”⁷

On September 15, 2010, New York sought leave to file additional bases to NYS-25 in response to Entergy’s Ninth Amendment to the LRA, NL-10-063, which added an aging management program for reactor pressure vessels and internal components.⁸ The additional bases refocused the contention from one of omission to one of inadequacy.⁹ In this motion, New York argued that Entergy’s AMP for Indian Point’s reactor pressure vessels and internal components did not meet the requirements of 10 C.F.R. § 54.51(c)(1)(iii) because it:

(1) fail[ed] to consider the synergistic effects of embrittlement and metal fatigue on RPV and internals; (2) fail[ed] to provide sufficient objective details about when it will conduct and complete baseline inspections and measurements; (3) fail[ed] to provide sufficient objective details about how and when it will implement corrective actions to address problems identified with embrittlement; (4) fail[ed] to include adequate inspection techniques to identify embrittlement issues for certain RPV internals, including bolts; and (5) rel[ie]d on vague future commitments to undertake corrective action when Entergy has encountered difficulties in tracking and completing commitments and corrective actions in a timely manner.¹⁰

According to New York, reactor pressure vessel internal components that should have been, but were not, analyzed for combined, synergistic aging effects of embrittlement and fatigue included:

⁷ NYS Petition at 224 (quoting Lahey Decl. ¶ 15).

⁸ State of New York’s Motion for Leave to File Additional Bases for Previously-Admitted Contention NYS-25 in Response to Entergy’s July 14, 2010 Proposed Aging Management Program for Reactor Pressure Vessels and Internal Components (Sept. 15, 2010). In support of the additional bases New York also filed additional supporting evidence and a second declaration from Dr. Richard Lahey dated September 15, 2010. Id. at 2.

⁹ Id. at 5.

¹⁰ Id., 6.

“the core baffle, intermediate shells, former plates and bolts (particularly the re-entrant corners), and including the baffle-to-baffle bolt locations, the core barrel-to-former bolt locations, and baffle-to-former bolt locations, core barrel (and its welds), lower core plate and support structures, clevis bolts, fuel alignment pins, thermal shield, the lower support column and mixer, and the control rods and their associated guide tubes, plates, and welds.”¹¹

On July 6, 2011, the Board granted New York’s motion, agreeing that “the allegations [New York] has made flow[ed] from LRA Amendment 9, [were] within the scope of the contention as originally admitted, and support the existence of a genuine dispute regarding the adequacy of Entergy’s AMP relating to the potential embrittlement of RPV and related internals.”¹²

On February 17, 2012 Entergy again amended its LRA with a “Revised RVI Program and Inspection Plan.”¹³ After 32 months of review and communications with Entergy, the NRC Staff released SSER2, approving Entergy’s modified AMP.¹⁴ New York filed the pending motion on February 13, 2015, to supplement the bases of NYS-25 to address Entergy’s Revised RVI Program and SSER2.¹⁵

B. Proposed Additional Bases for NYS-25

New York presents new bases for NYS-25 to address what it contends are deficiencies in Entergy’s Revised RVI Plan, challenging the plan as “inadequate for managing the full range of

¹¹ Additional Bases for Previously-Admitted Contention NYS-25 (Embrittlement of Reactor Pressure Vessels and Associated Internals) (Sept. 15, 2010) ¶ 3.2 [hereinafter NYS-25 Supplemental Bases 1].

¹² Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) at 28 (unpublished).

¹³ Letter from Fred Dacimo, [Entergy] Vice President, Operations License Renewal to NRC, NL-12-037 (Feb. 17, 2012) (ADAMS Accession No. ML12060A312).

¹⁴ Office of Nuclear Reactor Regulation, Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, NUREG-1930 (Supp. 2 Nov. 2014) (ADAMS Accession No. ML14310A803).

¹⁵ State of New York’s Motion for Leave to Supplement Previously-Admitted Contention NYS-25 (Feb. 13, 2015) [hereinafter NYS-25]; see also New York State February 2015 Supplement to Previously-Admitted Contention NYS-25 (Feb. 13, 2015) [hereinafter NYS-25 Supplemental Bases 2]; Decl. of Dr. Richard T. Lahey, Jr. (Feb 12, 2015); Decl. of Lisa S. Kwong (Feb. 13, 2015) [hereinafter Kwong Decl.].

aging effects at [Indian Point 2 and Indian Point 3].”¹⁶ Specifically, New York claims that the plan is inadequate in that it: (1) “continues to ignore the potentially synergistic effects of irradiation-induced embrittlement and other aging mechanisms on reactor vessel internals[;]”¹⁷ (2) inappropriately relies on EPRI guidance document MRP-227-A, Materials Reliability Program: Pressurized Water Reactor Internals Inspection and Evaluation Guidelines;¹⁸ (3) does not “take preventative actions in managing aging effects on RVIs” and instead relies on periodic visual inspections;¹⁹ and (4) uses an improper, and inconstant, methodology for calculating environmentally cumulative usage factors, some of which have yet to be completed and others which near the 1.0 limit, without an error analysis.²⁰

Lastly, New York seeks to add bases concerning: (1) the importance of maintaining safety margins and a recent instance in which a modeling mistake was discovered,²¹ and (2) an assertion that synergistic age related degradation is a growing concern, evidenced by the NRC and DOE’s congressional budget requests.²²

¹⁶ NYS-25 at 8.

¹⁷ Id. at 9; see also NYS-25 Supplemental Bases 2 ¶¶ 3.7, 3.8. Paragraph 3.7 provides a specific list of components “including, but not limited to, the core baffle, intermediate shells, former plates and bolts (particularly the re-entrant corners, the baffle-to-baffle bolt locations, the core barrel-to-former bolt locations, and baffle-to-former bolt locations), core barrel (and its welds), lower core plate and support structures, clevis bolts, thermal shield, the lower support column and mixer, and the control rods and their associated guide tubes, plates, and welds.” NYS-25 Supplemental Bases 2 ¶ 3.7.

¹⁸ Id. ¶ 3.9.

¹⁹ Id. ¶¶ 3.8, 7.13. New York argues that doing so “fails to address the possibility that a shock load will cause highly fatigued and degraded RVI components to fail entirely prior to the appearance of cracks or other detectable signs of wear.” Id. ¶ 3.8. New York also argues that the inspection is deficient in its reliance on remote-control VT-3 examinations and its lack of details of when replacement or repair of degraded components will occur following detection and its acceptance criteria. Id. ¶¶ 3.10, 7.12.

²⁰ Id. ¶ 7.11.

²¹ Id. ¶ 7.15.

²² Id. ¶ 7.16.

C. Entergy Answer

Entergy argues that the proposed amended contention is inadmissible as it is: “[(1)] out of date; [(2)] untimely; [(3)] represent[s] impermissible challenges to the license renewal rule; [(4)] fail[s] to challenge the technical bases for the RVI AMP; [(5)] rel[ies] upon mischaracterizations of key supporting documents; and [(6)] misconstrue[s] the purpose of EAF evaluations and the associated ASME Code requirements.”²³

More specifically, Entergy maintains that New York’s challenge to the fatigue calculations for non-reactor vessel internal components is outside the scope of SSER2 and is untimely because those calculations were disclosed between 2010 and 2013.²⁴ Concerning New York’s proposed amendments to address synergistic effects, preventive actions, and shock loads, Entergy argues that New York fails to raise a genuine dispute, “disregarding, rather than disputing the technical analyses underlying Entergy’s program.”²⁵ Similarly, Entergy argues that New York’s proposed additional bases on specific components—baffle-former bolts, clevis insert bolts, and lower support column caps—are unsupported.²⁶ Finally, Entergy argues that New York’s demand for repair or replacement of RVIs and maintenance of safety margins is an impermissible challenge to the license renewal rule.²⁷

D. NRC Staff Answer

The NRC Staff does not contest New York’s request to supplement the bases for this contention except in two limited respects. The NRC Staff opposes admission of paragraphs 7.15

²³ Entergy’s Consolidated Answer Opposing Intervenors’ Motions to Amend Contentions NYS-25 and NYS-38/RK-TC-5 (Mar. 10, 2015) at 13 [hereinafter Entergy Answer].

²⁴ Id. at 16-17; see also id. at 30 (arguing that this is an “effort to recycle old claims and expand the scope of NYS-25”).

²⁵ Id. at 20; see also id. at 22, 23.

²⁶ Id. at 23-24, 25, 27.

²⁷ Id. at 27-30.

and 7.16, asserting that New York “seeks to introduce matters which have not been shown to be related to the adequacy of Entergy’s RVI AMP or the Staff’s evaluation of that AMP in SSER2.”²⁸

Paragraphs 7.15 and 7.16 state respectively:

¶ 7.15. It is important to maintain safety margins when a reactor operates in a period of extended operation beyond its initial 40-year operating term. One reason safety margins should be maintained is to address unanticipated events or potential calculational or modeling mistakes. A recent recognition of a modeling mistake is the discovery that the Standard Review Plan (NUREG-0800) Branch Technical Position (BTP) 5-3 for estimating the initial fracture toughness of reactor vessel materials may be non-conservative for facilities that received their construction permits before 1973. See AAG Kwong Decl., Attach. 1, 2, 3.

¶ 7.16. Having now recognized the challenge posed by synergistic age related degradation mechanisms on light water reactor pressure vessel components, the federal government is spending considerable resources to investigate and understand these challenges. For example, NRC’s 2016 Congressional Budget Justification lists research on “materials degradation” as one of the Commission’s “major activities” (NUREG-1100, Vol. 31, at 20-21 (February 2015)) and the U.S. Department of Energy recently requested over \$30 million in funding for the Light Water Reactor Sustainability Program as part of its Fiscal Year 2015 Congressional Budget Request (see USDOE FY 2015 Congressional Budget Request, DOE/CF-0098, Vol. 3, at 425-426, 430 (March 2014)).²⁹

The NRC Staff contends that proposed paragraph 7.15 should be excluded from the matters to be litigated as New York offers no “reason to believe that the alleged non-conservatism in BTP 5-3 affects the adequacy of Entergy’s AMP for RVIs, or that the Staff relied upon BTP 5-3 in approving Entergy’s revised RVI AMP.”³⁰ Likewise, they argue that New York has not shown that the matters addressed in paragraph 7.16 are relevant to the adequacy of Entergy’s revised RVI AMP or “synergistic age related degradation mechanisms on light water reactor pressure vessel components.”³¹

²⁸ NRC Staff’s Answer to (1) State of New York’s Motion to Supplement Contention NYS-25, and (2) State of New York and Riverkeeper Inc.’s Joint Motion to Supplement Contention NYS-38/RK-TC-5 (Mar. 10, 2015) at 6-7 [hereinafter NRC Staff Answer].

²⁹ NYS-25 Supplemental Bases 2 ¶¶ 7.15, 7.16.

³⁰ NRC Staff Answer at 7.

³¹ Id. at 8 (quoting NYS-25 Supplemental Bases 2 ¶ 7.16).

E. New York Reply

New York replies, alleging that Entergy “conflate[s] the evidentiary requirements for contention admissibility with the level of evidence required to prove a contention after an evidentiary hearing”³² and maintaining that the State has met its burden for this stage of the proceeding.³³ The State notes that Entergy has not submitted any expert declaration or report refuting its expert declaration and characterizes Entergy’s arguments as disputes over issues of fact to be resolved at the evidentiary hearing.³⁴

The State seeks to refute Entergy’s allegation that it impermissibly challenges NRC regulations by noting that MRP-227-A “is not a legally binding regulation” but a guidance document, and “both the [Commission] and this Board have recognized in this proceeding, [that] alleged compliance . . . with guidance issued by NRC Staff is not a basis for refusing to admit a contention.”³⁵ Finally, the State responds that the proposed supplemental bases and evidence related to environmentally assisted fatigue calculations are timely and within the scope of Entergy’s amended and revised RVI Plan pursuant to new and approved Commitment 49, Entergy’s commitment to recalculate Cumulative Usage Factors adjusted for Environmental Fatigue (CUF_{en}) values for RVI components.³⁶ New York contends that because Entergy will “take the CUF_{en} analysis used for other locations in the reactor coolant pressure boundary and apply or ‘import’ that

³² State of New York Reply in Support of Admission of the February 2015 Supplement to Previously-Admitted Contention NYS-25 (Mar. 17, 2015) at 7.

³³ Id. at 9.

³⁴ Id. at 10.

³⁵ Id. at 13 (citing Perez v. Mortgage Bankers Assn., No. 13-1041, slip op. at 2 (Mar. 9, 2015); CLI-15-6, 81 NRC __, __ (slip op. at 18-19) (Mar. 9, 2015); Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) at 27-28 (unpublished)).

³⁶ Id. at 14-16.

type of analysis into the category of reactor vessel internal components” that “its agreement to use CUF_{en} measurements for reactor vessel components is firmly within the scope of the SSER2.”³⁷

Concerning NRC Staff’s objections, New York notes that (1) Entergy disclosed “documents relating to BTP 5-3 and identified [them] as relevant to Contention NYS-25”; [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]³⁸ The State reiterates its initial arguments on federal research and expenditures on materials degradation.

F. Board Decision Regarding Proposed Amendments to NYS-25

The proposed amendments to NYS-25 meet the requirements of 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(1) inasmuch as they are 1) based on information that was not previously available, (2) based on information that is materially different than information previously available, (3) within the scope of the previously admitted contention and (4) material to the findings that the NRC must make in its license renewal decision.³⁹

The Board finds that the proposed amended Contention NYS-25 is timely, as the additional bases, as well as the supporting evidence and declarations of Dr. Richard Lahey and Assistant Attorney General Kwong, are based on information which was not previously available and which, pursuant to the Board’s scheduling order, was to be submitted only after the publication of SSER2, which occurred on November 10, 2014. New York’s motion was filed on February 13, 2015, in accordance with the Board’s amendment to its Revised Scheduling Order, which set February 13, 2015 as the deadline.⁴⁰

³⁷ Id. at 15.

³⁸ Id. at 5 [REDACTED]

³⁹ 10 C.F.R. §§ 2.309(f)(1)(i)-(iii) and 2.309(f)(1)(i)-(vi).

⁴⁰ See Licensing Board Order (Revised Scheduling Order) (Dec. 9, 2014) at 2 (unpublished) [hereinafter Revised Scheduling Order] and Licensing Board Order (Granting New York and Riverkeeper’s Motion) (Feb. 6, 2015) (unpublished) [hereinafter Extension Order].

We hereby grant New York's Motion for Leave to add additional bases to previously admitted NYS-25 without altering or amending the contention as written. NYS-25, as previously amended, challenges the adequacy of Entergy's aging management plan due to embrittlement of RPVs and the associated internals. New York's proposed supplemental bases, addressing Entergy's revised RVI AMP that was approved in the recently issued SSER2, are within the scope of the contention. Paragraph 7.15 and BTP 5-3 support the existence of a genuine dispute regarding the adequacy of Entergy's AMP. Furthermore, Paragraph 7.16 is relevant as supporting evidence of the synergistic effects of aging which are part and parcel to the contention.⁴¹ We remind the parties that at this stage of the proceeding, we do not weigh the evidence.⁴² We merely conclude that New York has made the requisite showing that its proposed additional bases are within the scope of NYS-25, pertain to new information not previously available, and are material to the findings the NRC must make to support license renewal. Accordingly, New York's Motion to add bases to NYS-25 is granted.

III. NYS-38/RK-TC-5

A. Background

In November 2011, the Board admitted and consolidated the State of New York's and Riverkeeper's Joint Contention NYS-38/RK-TC-5. As admitted, this contention states:

Entergy is not in compliance with the requirements of 10 C.F.R. §§ 54.21(a)(3) and (c)(1)(iii) and the requirements of 42 U.S.C. §§ 2133(b) and (d) and 2232(a) because Entergy does not demonstrate that it has a program that will manage the affects of aging of several critical components or systems and thus NRC does not have a record and a rational basis upon which it can determine whether to grant a renewed license to Entergy as required by the Administrative Procedure Act.⁴³

⁴¹ See NYS-25 Supplemental Bases 1 ¶3.2.

⁴² See LBP-08-13, 68 NRC at 61-64.

⁴³ See Licensing Board Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) (Nov. 10, 2011) [hereinafter Order Admitting NYS-38], as clarified, Licensing Board Order (Granting Entergy's Motion for Clarification of Licensing Board Memorandum and Order Admitting Contention NYS-38/RK-TC-5) (Dec. 6, 2011) [hereinafter Order Clarifying NYS-38].

As noted above, in June 2013, the Board confirmed that a hearing on Contention NYS-25, Consolidated Contention NYS-26B/RK-TC-1B, and Joint Contention NYS-38/RK-TC-5 would be held in abeyance until the NRC Staff released a Supplement to its 2009 Safety Evaluation Report and that, in the interest of judicial economy, the intervenors should postpone the filing of new or amended contentions addressing issues related to these contentions until after publication of the SSER2.⁴⁴ In November 2014, NRC Staff released Supplement 2 to its 2009 Safety Evaluation Report (SSER2), which evaluated and approved Entergy's February 2012 "Revised Reactor Vessel Internals Program and Inspection Plan" (NL-12-037), as modified over a 32-month period by Entergy's responses to various requests for additional information from NRC Staff (collectively, "the Amended and Revised RVI Plan").

B. Proposed Additional Bases for NYS-38/RK-TC-5

In their Motion for Leave to Supplement NYS-38/RK-TC-5, New York State and Riverkeeper argued that new information provided in the SSER2 necessitated additional bases to their existing contention related to the contents and conclusions of Entergy's Amended and Revised RVI Plan, as well as the contents and conclusions of the SSER2, which approved Entergy's Amended and Revised RVI Plan.⁴⁵ Intervenors argued that the Amended and Revised RVI Plan substantially modified and replaced Entergy's previously-proposed approach relating to RVIs.⁴⁶ Furthermore, they asserted that the SSER2 revealed for the first time that NRC Staff would accept Entergy's current proposal to manage the combined and synergistic effects of various aging mechanisms on RVIs through periodic inspections, rather than preventative actions, and that the NRC would accept Entergy's continued reliance on NUREG/CR-5704 and NUREG/CR-6909 (Rev.

⁴⁴ Tr. at 4531-35.

⁴⁵ State of New York and Riverkeeper's Joint Motion for Leave to Supplement Previously-Admitted Joint Contention NYS-38/RK-TC-5 (Feb. 13, 2015) at 5 [hereinafter NYS-38/RK-TC-5].

⁴⁶ Id.

0) to calculate CUF_{en} for various components.⁴⁷ By pointing to specific sections in the SSER2, Intervenor sought to demonstrate that the information upon which their supplemented contention and its bases rely was not previously available, and is materially different from previously available information.⁴⁸

C. Entergy's Answer

On March 10, 2015, Entergy filed a consolidated answer to Intervenor's Motion to Amend NYS-25 and NYS-38/RK-TC-5.⁴⁹ In challenging this motion, Entergy argued that Intervenor failed to address current technical documentation related to this contention, and related contention NYS-25, such as EPRI-MRP, that Intervenor base their motion on unsupported speculation and impermissibly attack Commission rules, specifically 10 C.F.R. §§ 2.335 and 2.309(f)(1)(ii).⁵⁰ Entergy also challenged the timeliness of Intervenor's claims because the calculations of Dr. Lahey were based on previously-available information.⁵¹

D. NRC Staff Answer

The NRC Staff opposed Intervenor's motion because, in its view, it would duplicate and confuse issues between this contention and NYS-25 and impermissibly aims to expand the scope of the admitted contention, which was admitted as a challenge to the regulatory sufficiency of Entergy's commitment to develop an adequate AMP in the future, and is now being re-cast as a challenge to the adequacy of Entergy's revised AMP.⁵² In its answer to New York and

⁴⁷ Id. at 5-6.

⁴⁸ Id.

⁴⁹ See generally Entergy Answer.

⁵⁰ Id. at 3, 18, 32.

⁵¹ Id. at 17.

⁵² Id. at 11.

Riverkeeper's Motion, the NRC Staff did not contest New York's request to supplement the bases for this contention to include the matters addressed in SSER2.⁵³

E. New York and Riverkeeper Reply

In its Reply, Intervenors repeated earlier arguments that the overlap between NYS-25 and NYS-38/RK-TC-5 does not unduly confuse related issues and this does not defeat their motion, that MRP-27 is not a regulation and, accordingly, is not exempt from expert attack in this proceeding, and that because Entergy's Revised RVI plan postpones the evaluation of CUF_{en} values for IP3's RVI components, they are within the scope of this contention and timely.⁵⁴

F. Board Decision Regarding Proposed Amendments to NYS-38/RK-TC-5

The proposed amendments to NYS-38/RK-TC-5 meet the requirements of 10 C.F.R. § 2.309(f)(1) and 10 C.F.R. § 2.309(f)(1) inasmuch as they are (1) based on information that was not previously available, (2) based on information that is materially different than information previously available, (3) within the scope of the previously admitted contention and (4) material to the findings that the NRC must make in its license renewal decision.⁵⁵

i. New York and Riverkeeper's Motion is Timely

The Board finds that the proposed amended Contention NYS-38/RK-TC-5 is timely, as the additional bases, as well as the supporting evidence and declarations of Dr. Richard Lahey and Dr. Joram Hopfenfeld, are based on information which was not previously available and which, pursuant to the Board's scheduling order, was to be submitted only after the publications of SSER2, which occurred on November 10, 2014. New York and Riverkeeper's Motion was filed on

⁵³ NRC Staff Answer at 2, 6, 10-13.

⁵⁴ State of New York and Riverkeeper Joint Reply in Support of Admission of the February 2015 Supplement to Previously-Admitted Contention NYS-38/RK-TC-5 (Mar. 17, 2015) at 3, 6, 13, 14 [hereinafter NYS and RK Reply Regarding NYS-38/RK-TC-5].

⁵⁵ 10 C.F.R. §§ 2.309(f)(1)(i)-(iii) and 2.309(f)(1)(i)-(vi).

February 13, 2015, in accordance with the Board's amendment to its Revised Scheduling Order, which set February 13, 2015 as the deadline.⁵⁶

ii. The Proposed Additional Bases Are Material to the License Renewal Decision and Within the Scope of the Contention

The Board finds that New York and Riverkeeper have identified genuine and material disputes with Entergy's approach to RVI components at Indian Point in their supplement to contention NYS-38/RK-TC-5. Intervenors' proposed supplement does not expand the issues beyond the reasonable scope of the contention as admitted by the Board. Although the Board admitted NYS-38/RK-TC-5 as a contention challenging the sufficiency of Entergy's reliance on commitments to develop an aging management program that satisfies NRC regulatory requirements,⁵⁷ the contention continues to be admissible as it alleges that Entergy failed to comply with 10 C.F.R. §§ 54.21(a)(3) because it did not "demonstrate that it has a program" to manage aging effects on certain components.⁵⁸

The Board has acknowledged that there is significant overlap between contentions NYS-25 and NYS-38/RK-TC-5, and thus it is permissible that the supplemental Declaration of Dr. Richard Lahey does not fully distinguish between its discussion of issues relating to the two contentions.⁵⁹ Furthermore, NYS-38/RK-TC-5 discusses specific components of the AMP which are not addressed in NYS-25, and thus the parties have sufficient notice of the issues which they are expected to defend or oppose.⁶⁰

⁵⁶ See Revised Scheduling at 2 and see generally Extension Order.

⁵⁷ Order Admitting NYS-38 at 3-4.

⁵⁸ NYS and RK Reply Regarding NYS-38/RK-TC-5 at 3.

⁵⁹ Order Clarifying NYS-38 at 5.

⁶⁰ See February 2015 Supplement to Joint Contention NYS-38/RK-TC-5 ¶¶ 5.1-5.3.

Thus, the Board finds that New York and Riverkeeper's proposed supplement and additional bases for Contention NYS-38/RK-TC-5 are admissible.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 31, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
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 **[REDACTED] MEMORANDUM AND ORDER (Granting Motions for Leave to File Amendments to Contentions NYS-25 and NYS-38/RK-TC-5)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell]
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Dated at Rockville, Maryland
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