

April 1, 2015

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 38th 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 38th monthly status report to the Board.

Safety Issues

1. Track 2 Safety Issues. On November 6, 2014, the Staff issued Supplement 2 to its Safety Evaluation Report ("SER") related to license renewal of Indian Point Units 2 and 3 ("IP2/IP3").¹ Therein, the Staff addressed changes made to the license renewal application

¹ See (1) Letter from Sherwin E. Turk, Esq. to the Board (Nov. 7, 2014); (2) Letter from Christopher G. Miller (NRC) to Vice President, Operations (Entergy) (ADAMS Accession No. ML14288A608); (3) "Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Supplement 2," NUREG-1930, Supp. 2 (Nov. 2014) ("SER Supplement 2" or "SSER2") (ADAMS Accession No. ML14310A803). On September 23, 2009, the Advisory Committee on Reactor Safeguards ("ACRS") issued a letter recommending approval of the IP2/IP3 license renewal application on September 23, 2009. See SER (Ex. NYS00326E), at 5-2. On November 12, 2014, the Staff transmitted SSER 2 to the ACRS for its consideration. See Memorandum from Yoira Diaz-Sanabria, NRR to Edwin Hackett, ACRS (Nov. 12, 2014) (ADAMS Accession No. ML14303A681). The Staff plans to brief an ACRS Subcommittee on developments concerning IP2/IP3 license renewal (including SSER 2) on April 23, 2015. See "Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting," 80 Fed. Reg. 17.515 (April 1, 2015).

("LRA") through Amendment 14;² revisions to the IP2 Updated Final Safety Analysis Report ("UFSAR");³ information provided by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") in response to Staff requests for additional information ("RAIs") following the issuance of SER Supplement 1;⁴ and the Staff's evaluation of the IP2/IP3 Reactor Vessel Internals ("RVI") Aging Management Program and Inspection Plan ("AMP"), which relates to Contention NYS-25.

On February 13, 2015, the State of New York ("New York") filed a motion for leave to supplement Contention NYS-25, and New York and Riverkeeper, Inc. filed a motion for leave to supplement Contention NYS-38/RK-TC-5); on March 31, 2015, the Board granted those motions.⁵ In accordance with the Board's Revised Scheduling Order of December 9, 2014,⁶ motions for summary disposition of Track 2 safety contentions are due 20 days after issuance of the Board's ruling on contention admissibility, *i.e.*, by April 20, 2015. In addition, new or revised statements of position, written testimony with affidavits, and exhibits; motions to strike; proposed Board questions; motions for leave to conduct cross-examination, and cross-examination plans are due within specified times following issuance of the Board's ruling on contention admissibility, as set forth in the Board's Revised Scheduling Order.⁷

² See Letter from Fred Dacimo, Entergy, to NRC Document Control Desk, "Amendment 14 to License Renewal Application," NL-13-131 (Sept. 26, 2013) (ADAMS Accession No. ML13269A452).

³ See Letter from Fred Dacimo, Entergy, to NRC Document Control Desk, "Indian Point Energy Center Letters to NRC, License Renewal Application, dated April 23, 2007," NL-13-130 (Sept. 26, 2013) (ADAMS Accession No. ML13269A452).

⁴ "Safety Evaluation Report Related to the License Renewal of Indian Point Nuclear Generating Plant Units 2 and 3," NUREG-1930, Supp. 1 (Aug, 2011) ("SER Supplement 1").

⁵ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Memorandum and Order (Granting Motions for Leave to File Amendments to Contentions NYS-25 and NYS-38/RK-TC-5)" (Feb. 6, 2015).

⁶ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Revised Scheduling Order" (Dec. 9, 2014), at 2.

⁷ Revised Scheduling Order (Dec. 9, 2014) at 2-3.

2. Other Safety Issues. The Staff is reviewing issues associated with two recent Interim Staff Guidance (“ISG”) documents (LR-ISG-2012-02 and LR-ISG-2013-01).⁸ The Staff has not yet determined whether these matters will be addressed in an SER Supplement. The Staff will provide further information to the Board regarding these issues when available.

Environmental Issues

3. FSEIS Supplement. There has been no change in this item since the Staff filed its previous status report. As stated previously, the Staff intends to issue a second supplement to the Final Supplemental Environmental Impact Statement (“FSEIS”) for license renewal of IP2 and IP3,⁹ which will address new information received by the Staff since preparation and publication of the previous FSEIS Supplement (FSEIS Vol. 4) in June 2013. The matters to be addressed in this FSEIS supplement include the Applicant’s May 6, 2013 submittal of revised engineering project cost information for severe accident mitigation alternatives (SAMAs); Entergy’s February 19, 2014 submittal of new aquatic impact information; the June 2013 revision of 10 C.F.R. Part 51, Table B-1, and the Generic Environmental Impact Statement for license renewal; and the September 2014 amendment of 10 C.F.R. § 51.23(b) regarding the continued storage of spent nuclear fuel.¹⁰ The Staff expects to issue the Draft FSEIS

⁸ See (1) Notice of Issuance, Interim Staff Guidance; LR-ISG-2012-02; “Aging Management of Internal Surfaces, Fire Water Systems, Atmospheric Storage Tanks, and Corrosion under Insulation,” 78 Fed. Reg. 70,076 (Nov. 22, 2013); (2) Notice of Issuance, Interim Staff Guidance; LR-ISG-2013-01; “Aging Management of Loss of Coating or Lining Integrity for Internal Coatings/ Linings on In-Scope Piping, Piping Components, Heat Exchangers, and Tanks,” 79 Fed. Reg. 68,308 (Nov. 14, 2014).

⁹ “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report,” NUREG-1437, Supplement 38 (Dec. 2010) (“FSEIS”) (Ex. NYS000133A-J).

¹⁰ See (1) NUREG-1437, Revision 1, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (NUREG-1437, Rev. 1) (June 2013); and (2) NUREG-1437, Volumes 1-2: Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996) (“GEIS-LR”) (Exh. NYS000131A-I).

Supplement in July 2015 and the Final FSEIS Supplement in March 2016.¹¹

4. Contention NYS-35/36. On July 14, 2011, the Board issued LBP-11-17, granting summary disposition on Contention NYS-35/36 (Cost-Beneficial SAMAs) in favor of New York.¹² On February 14, 2014, the Applicant and Staff filed petitions seeking Commission review of that decision;¹³ New York filed an answer opposing those petitions on March 25, 2014; replies were filed on April 9, 2014. On February 18, 2015, the Commission granted the Staff and Entergy's petitions for review of the Board's rulings on Contention NYS-35/36, and instructed the Staff to respond to four questions related thereto.¹⁴ In accordance with the Commission's Order, the Staff filed its response on March 30, 2015; reply briefs are due by May 11, 2015.

On May 7, 2013, the Applicant notified the Board that it had submitted a letter to the Staff (NL-13-075), reporting the results of its completed engineering project cost estimates for Severe Accident Mitigation Alternatives ("SAMAs") that previously had been identified as potentially cost-beneficial.¹⁵ The Applicant noted, *inter alia*, that it was submitting the information "to support resolution of certain issues identified by the Board" in LBP-11-17. On October 6, 2014, the Staff transmitted RAIs to the Applicant concerning its refined engineering

¹¹ See Letter from Christopher G. Miller (NRC) to Vice President, Operations (Entergy) (Nov. 3, 2014) (ADAMS Accession No. ML14254A207).

¹² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-11-17, 74 NRC 11, *petition for review granted*, CLI-15-3, 81 NRC ____ (Feb. 18, 2015).

¹³ See (1) "Applicant's Petition for Review of Board Decisions Regarding Contentions NYS-8 (Electrical Transformers), CW-EC-3A (Environmental Justice), and NYS-35/36 (SAMA Cost Estimates)" (Feb. 14, 2014) ("Applicant's Petition for Review"); and (2) "NRC Staff's Petition for Commission 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) ("Staff Petition for Review").

¹⁴ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-3, 81 NRC ____ (Feb. 18, 2015) (slip op.).

¹⁵ 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).

project cost information; the Applicant submitted its responses on November 20, 2014.¹⁶ As stated previously, the Staff plans to present its evaluation of the Applicant's revised SAMA cost information in the draft FSEIS Supplement to be issued in July 2015.¹⁷ In accordance with the Board's Order of July 9, 2013, "adjudicatory submissions based on NL 13 075 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. . . ." ¹⁸ The Staff will provide further information to the Board regarding this issue when available.

5. Contention NYS-12C (SAMAs). On February 14, 2014, New York filed a petition for Commission review of the Board's decision in LBP-13-13,¹⁹ concerning its resolution of Contention NYS-12C;²⁰ Entergy and the Staff responded to that petition on April 28, 2014; New York filed its reply on May 22, 2014. On April 28, 2014, New York filed a petition for review of the Board's Order denying its motion to reopen and reconsider.²¹ Entergy and the Staff filed answers to that petition on May 23, 2014, to which New York replied on June 2, 2014. On February 18, 2015, the Commission granted New York's petition for review and directed the

¹⁶ See Letter from Fred Dacimo (Entergy) to NRC Document Control Desk (NL-14-143) (Nov. 20, 2014) (ADAMS Accession No. ML14337A042).

¹⁷ See Letter from Sherwin E. Turk, Esq., to the Board (July 15, 2014); Tr. at 4598; "Indian Point Nuclear Generating Units 2 and 3; Entergy Nuclear Operations, Inc., License Renewal Application; Intent to Prepare A Second Supplement to Final Supplemental Environmental Impact Statement," 79 Fed. Reg. 52,058 (Sept. 2, 2014).

¹⁸ *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3),* "Order (Granting Entergy's Motion [for] Clarification)" (July 9, 2013), at 3.

¹⁹ *Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3),* LBP-13-13, 78 NRC 246 (Nov. 27, 2013).

²⁰ "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).

²¹ See (1) "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" (Apr. 28, 2014); and (2) "Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention)" (Apr. 1, 2014).

parties to respond to eight related questions.²² In accordance with the Commission's Order, initial briefs were filed by the Staff, Entergy, New York, and the State of Connecticut on March 30, 2015; reply briefs are due by April 29, 2015.²³

6. CZMA Issues. To the best of the Staff's knowledge, information and belief, the current status of CZMA-related issues is as follows.

(a) *Previous Reviews*. On June 12, 2013, the Board denied the Applicant's and New York's motions seeking the entry of a declaratory order regarding Entergy's claim that New York had previously conducted a review of IP2/IP3 for consistency with the New York State Coastal Management Program ("CMP"), such that no further review is required under the Coastal Zone Management Act ("CZMA").²⁴ The Board left open the possibility that the motions might be re-filed after consultations between the Staff and New York pursuant to 15 C.F.R. § 930.51(e). The Staff has since engaged in consultations with the New York State Department of State ("NYSDOS") and the Applicant. On December 6, 2013, the Staff transmitted a request for information to NYSDOS regarding prior reviews of Indian Point's consistency with the New York State Coastal Management Program.²⁵ A series of written and oral communications

²² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-2, 81 NRC ____ (Feb. 18, 2015) (slip op.).

²³ On March 9, 2015, the Commission issued a Memorandum and Order (CLI-15-6) resolving petitions for review of other portions of LBP-13-13. See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-6, 81 NRC ____ (Mar. 9, 2015) (slip op.) (reversing the Board's resolution of Contention NYS-8 (Transformers), and reversing in part, and affirming in part, the Board's resolution of Contention CW-EC3A (Environmental Justice)).

²⁴ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Granting New York's Motions, Denying Clearwater's Motion, and Denying CZMA Motions)" (June 12, 2013).

²⁵ See Letter from Sherwin E. Turk to the Board (Dec. 12, 2013), transmitting letter from David J. Wrona (NRC) to George Stafford (NYSDOS) (Dec. 6, 2013) (ADAMS Accession No. ML13281A065).

between the Staff and NYSDOS occurred,²⁶ and on May 30, 2014, NYSDOS provided its response to the Staff.²⁷ On July 15, 2014, Entergy submitted its views regarding the NYSDOS response,²⁸ to which NYSDOS replied on July 25, 2014.²⁹ Entergy and New York submitted additional correspondence to the Staff on November 25 and December 3, 2014, respectively.³⁰ The Staff is reviewing the NYSDOS and Entergy submittals, and will provide further information to the Board when available.

(b) *Grandfathering*. On December 11, 2014, the State of New York Supreme Court, Appellate Division, Third Judicial Department, reversed the Supreme Court's December 2013 decision, and held (in a 5-0 decision) that Indian Point Units 2 and 3 were "grandfathered" under New York's Coastal Management Program and are therefore exempt from consistency review under the CMP.³¹ On January 9, 2015, New York filed a motion before the Appellate Division, seeking reargument or, in the alternative, leave to appeal the Appellate Division's

²⁶ See (1) Letter from George R Stafford (NYSDOS) to David J. Wrona (NRC) (Jan. 6, 2014) (ADAMS Accession No. ML14028A209); (2) "Summary of Phone Call Between [NYSDOS] and [NRC] on January 13, 2014" (Feb. 19, 2014) (ADAMS Accession No. ML14024A372); (3) Letter from David J. Wrona (NRC) to George Stafford (NYSDOS) ("Consistency of the Indian Point Nuclear Generating Unit Nos. 2 and 3 License Renewal Application with New York State Coastal Management Program") (Mar. 4, 2014) (ADAMS Accession No. ML14024A064); and (4) Summary of Phone Call Between New York State Department of State and U.S. Nuclear Regulatory Commission on May 7, 2014, Regarding the Coastal Zone Management Act Consistency Review (May 27, 2014) (ADAMS Accession No. ML14136A005).

²⁷ See Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (May 30, 2014) (ADAMS Accession No. ML14154A334).

²⁸ See Letter from Bobby R. Burchfield, Esq., to David J. Wrona (NRC) (July 15, 2014) (ADAMS Accession No. ML141198A229).

²⁹ See Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (July 25, 2014) (ADAMS Accession No. ML14230A005).

³⁰ See (1) Letter from Bobby R. Burchfield, Esq., to David J. Wrona (NRC) (Nov. 25, 2014) (ADAMS Accession No. ML14336A084); and (2) Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to David J. Wrona (NRC) (Dec. 3, 2014) (ADAMS Accession Nos. ML14351A539, ML14351A541, ML14351A542, ML14351A543, ML14351A545).

³¹ *Entergy Nuclear Operation, Inc. v. New York State Department of State*, 518510, 999 N.Y.S.2d 207, 2014 N.Y. App. Div. LEXIS 8686; 2014 NY Slip Op 08702 (App. Div. 3d Dep't, Dec. 11, 2014), *rev'g* 42 Misc. 3d 896, 976 N.Y.S.2d 650 (Sup. Ct. 2013).

decision to the New York Court of Appeals; the court denied that motion on March 5, 2015. New York is expected to file an appeal before the New York Court of Appeals.³²

(c) *2012 Consistency Certification.* On December 17, 2012, Entergy filed a certification with the NYSDOS, asserting that license renewal of IP2/IP3 is consistent with the New York CMP; NYSDOS then commenced a review of that consistency certification. On November 5, 2014, Entergy submitted a letter to NYSDOS, stating that it was withdrawing its consistency determination, subject to resubmittal following issuance of the Staff's Final FSEIS Supplement in March 2016.³³ In response, NYSDOS stated that the withdrawal was not effective and it offered Entergy an opportunity to request a stay of NYSDOS's decision;³⁴ Entergy replied to NYSDOS on December 1, 2014.³⁵ On December 26, 2014, NYSDOS and Entergy entered into an agreement (as corrected on December 29, 2014), deferring New York's review of Entergy's consistency certification until June 30, 2015; absent any further extension, NYSDOS indicated it will issue its consistency determination by July 7, 2015.

7. Aquatic Impacts. There has been no change in this item since the Staff filed its previous status report. As stated previously, on February 19, 2014, Entergy submitted new information to the Staff regarding the impacts of plant operation on various aquatic species in

³² See Agreement between [Entergy] and [NYSDOS] (Dec. 24, 2014) at 3, attached to E-mail message from Linda M. Baldwin, Esq. (NYSDOS) to Lois James (NRC) (Dec. 29, 2014) (ADAMS Accession No. ML14363A559).

³³ See Letter from John Sipos to the Board (Nov. 6, 2014), attaching letter from Fred Dacimo (Entergy) to NRC Document Control Desk and Linda M. Baldwin, Esq. (NYSDOS), NL 14 140 ("Withdrawal of December 17, 2012 Coastal Zone Management Act Consistency Certification") (Nov. 5, 2014) (ADAMS Accession No. ML14310A346).

³⁴ Letter from Linda M. Baldwin, Esq., General Counsel (NYSDOS), to Fred Dacimo (Entergy) (Nov. 21, 2014) (ADAMS Accession No. ML14328A474).

³⁵ Letter from Martin R. Healy, Esq. (Goodwin Proctor), to Linda Baldwin, Esq. (NYSDOS) (Dec. 1, 2014) (ADAMS Accession No. ML14335A779).

the Hudson River,³⁶ modifying the information that had been evaluated in the FSEIS and FSEIS Supplement (FSEIS Vol. 4).³⁷ The Staff transmitted a request for additional information to the Applicant on August 28, 2014, as amended on September 26, 2014,³⁸ Entergy's responses were submitted on October 27, 2014.³⁹ The Staff issued further RAIs on aquatic issues on February 18, 2015; Entergy's RAI responses are due by April 6, 2015.⁴⁰ As stated previously, the Staff plans to present its evaluation of the new information in a draft FSEIS supplement to be issued in July 2015. The Staff will provide further information to the Board regarding this issue when available.

8. Continued Storage. On February 26, 2015, the Commission denied various suspension petitions, motions to reopen, and motions for leave to file new contentions (including Riverkeeper's Contention RK-EC-10), challenging the Commission's Continued Storage Rule ("CSR"), and reaffirmed its determinations regarding the technical feasibility of

³⁶ See Letter from Fred Dacimo (Entergy), to Lois James and NRC Document Control Desk, "Final Supplemental Environmental Impact Statement," NL-14-030 (Feb. 19, 2014) (ADAMS Accession No. ML14063A528).

³⁷ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report," NUREG-1437, Supplement 38, Volume 4 (June 2013) (ADAMS Accession No. ML13162A616).

³⁸ See (1) Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review" (Aug. 28, 2014) (ADAMS Accession No. ML14225A847); and (2) Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review" (Sept. 26, 2014) (ADAMS Accession No. ML14261A031).

³⁹ See Letter from Fred Dacimo (Entergy) to NRC Document Control Desk, "Reply to Request for Additional Information Regarding the License Renewal Application," NL-14-133 (Oct. 27, 2014) (ADAMS Accession No. ML14300A704).

⁴⁰ Letter from Michael Wentzel (NRC) to Vice President, Operations (Entergy), "Request for Additional Information for the Review of the Indian Point Nuclear Generating Unit Nos. 2 and 3, License Renewal Application Environmental Review" (Feb. 18, 2015) (ADAMS Accession No. ML14329B245).

safe spent fuel storage and ultimate disposal in a repository.⁴¹ The Commission's CSR and related environmental impact statement have been challenged by New York and others in petitions for review filed before the U.S. Court of Appeals for the D.C. Circuit.⁴²

9. Other Matters. 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/

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Dated at Rockville, Maryland
this 1st day of April 2015

⁴¹ *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC ____ (Feb. 26, 2015), slip op. at 4.

⁴² See, e.g., *State of New York v. NRC*, Case No. 14-1210 (D.C. Cir., Oct. 31, 2014) (consolidating appeals) (ADAMS Accession No. ML14317A789).

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
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(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 38th STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF FEBRUARY 16, 2012," dated April 1, 2015, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above- captioned proceeding, this 1st day of April 2015.

/Signed (electronically) by/

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