

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:	)	
	)	Docket No. 50-255-LA
ENTERGY NUCLEAR OPERATIONS, INC.	)	
(Palisades Nuclear Plant)	)	April 6, 2015

**ENTERGY’S BRIEF IN RESPONSE TO  
NEW ISSUE RAISED IN PETITIONERS’ REPLY**

**I. INTRODUCTION**

Entergy Nuclear Operations, Inc. (“Entergy”) files this Brief pursuant to the Atomic Safety and Licensing Board’s (“Board”) direction at the March 25, 2015 oral argument in this proceeding.<sup>1</sup> As demonstrated in this Brief, Petitioners’ Reply<sup>2</sup> impermissibly raises a new claim that fails to address or meet the standards for late-filed contentions in 10 C.F.R. § 2.309(c), that is wholly unsupported (and in fact contradicted by Petitioners’ expert’s statement), and that fails to raise a genuine dispute on a material issue of law or fact. Accordingly, the Board should reject Petitioners’ new claim.

As part of its license amendment request to implement 10 C.F.R. § 50.61a, under Section 50.61a(f)(6)(i), Entergy was required to evaluate whether available surveillance data show a significantly different trend than what the embrittlement model specified for use in Section 50.61a predicts. In particular, the surveillance data used must be a “heat-specific match,” and

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<sup>1</sup> Hearing Transcript at 98-99 (Mar. 25, 2015) (“Transcript”), *available at* ADAMS Accession No. ML15086A540.

<sup>2</sup> Petitioners’ Combined Reply in Support of Amended Petition to Intervene and for a Public Adjudication Hearing of Entergy License Amendment Request for Authorization to Implement 10 CFR §50.61a, ‘Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events’ (Jan. 20, 2015) (“Reply”). Petitioners are Beyond Nuclear, Don’t Waste Michigan, Michigan Safe Energy Future – Shoreline Chapter, and the Nuclear Energy Information Service.

“[if] three or more surveillance data points measured at three or more different neutron fluences exist for a specific material, the licensee shall determine if the surveillance data show a significantly different trend than the embrittlement model predicts.”<sup>3</sup>

At oral argument, Judge Arnold questioned Entergy’s counsel regarding a statement by Petitioners in their Reply.<sup>4</sup> Specifically, the Reply alleges that “[Petitioners’ expert Mr.] Gundersen has attested to the lack of proof that the metals from the various RPVs match.”<sup>5</sup> Noting that this claim did not appear in the Petition,<sup>6</sup> the Board afforded Entergy and the NRC Staff the opportunity to each file a brief addressing this issue within ten days of the date the oral argument transcript became available to the parties.<sup>7</sup>

## II. RESPONSE TO PETITIONERS’ NEW CLAIM

This new claim is absent from the Petition, and is effectively an untimely attempt to amend the proposed contention. Under well-settled and controlling precedent, Petitioners cannot use their reply to “expand the scope of arguments set forth in the original hearing request” or introduce new bases for a contention, unless the late filing criteria are met.<sup>8</sup> Here, Petitioners have not attempted to address the late-filed contention standards in 10 C.F.R. § 2.309(c), and

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<sup>3</sup> 10 C.F.R. § 50.61a(f)(6)(i).

<sup>4</sup> Transcript at 86-87.

<sup>5</sup> Reply at 5.

<sup>6</sup> Amended Petition to Intervene and for a Public Adjudication Hearing of Entergy License Amendment Request for Authorization to Implement 10 CFR §50.61a, ‘Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events’ (Dec. 8, 2014).

<sup>7</sup> Transcript at 98-99. The Oral Argument transcript was provided to the parties electronically on March 27, 2015.

<sup>8</sup> *See Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006); *see also Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) (holding that the Commission’s rules “do not allow [] using reply briefs to provide, for the first time, the necessary threshold support for contentions,” absent demonstration of a “compelling justification”).

have not demonstrated a compelling justification for their untimely effort to amend the contention. Thus, the proffered amendment should “not be entertained” by the Board.<sup>9</sup>

Further, the new claim itself is unsupported and fails to raise a genuine dispute. First, the statement in the Reply that Mr. Gundersen has attested to the lack of proof that the metals from the various RPVs match is wholly inaccurate. Mr. Gundersen makes no such assertion in his declaration in this proceeding.<sup>10</sup> In fact, Mr. Gundersen contradicted the statement in the Reply, acknowledging that “it is *true* that the material used to weld the reactor plates together to create the reactor vessel is *similar* among the four plants.”<sup>11</sup> Thus, as a factual matter, Petitioners’ new claim is at odds with Mr. Gundersen’s statement and therefore demonstrably incorrect.<sup>12</sup>

Finally, consistent with the requirements of 10 C.F.R. § 50.61a(f)(6)(i), the Westinghouse alternate PTS evaluation (“WCAP-17628-NP”) does, in fact, demonstrate that the materials are a “heat-specific match.”<sup>13</sup> Specifically, WCAP-17628-NP shows that for each of the three materials used in the Palisades RPV for which there is surveillance data, Westinghouse conducted surveillance capsule data checks using materials that are a heat-specific match.<sup>14</sup>

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<sup>9</sup> 10 C.F.R. § 2.309(c)(1) (“motions for leave to file new or amended contentions filed after the deadline . . . will not be entertained absent a determination by the presiding officer that a participant has *demonstrated* good cause . . .”) (emphasis added).

<sup>10</sup> Declaration of Arnold Gundersen (Dec. 1, 2014) (“Gundersen Declaration”). Notably, the Reply does not identify where in the Gundersen Declaration the statement is found.

<sup>11</sup> Gundersen Declaration ¶ 27 (emphasis added).

<sup>12</sup> Mr. Gundersen did claim that the *plants* are dissimilar because they use designs from different vendors. *See, e.g.*, Gundersen Declaration ¶ 27 (“the dramatically different nuclear core design and operational power characteristics make an accurate comparison impossible”); *see also generally id.* ¶¶ 26-29. But these claims regarding core design do not relate to the similarity (or lack thereof) of the RPV materials themselves. In any event, Entergy has addressed Mr. Gundersen’s design-related claims in its Answer. *See* Entergy’s Answer Opposing Petition to Intervene and Request for Hearing at 25-29 (Jan. 12, 2015).

<sup>13</sup> WCAP-17628-NP, Revision 1, Alternate Pressurized Thermal Shock (PTS) Rule Evaluation for Palisades at 8-4 tbl. 8-5 (June 2014), *available at* ADAMS Accession No. ML14211A525.

<sup>14</sup> *See id.* at 6-1 to 6-3, tbls. 6-1 (showing that the surveillance data used for metal heat C-1279 were all from Palisades plant materials), 6-2 (showing that the surveillance data used from Palisades, H.B. Robinson Unit 2, and Indian Point Units 2 and 3 were all weld wire heat W5214), and 6-3 (showing that the surveillance data used from Palisades and Diablo Canyon Unit 1 were all weld wire heat 27204); *see also id.* at 8-4, tbl. 8-5

Petitioners do not provide a reasoned basis or explanation of their disagreement with this information, as is required.<sup>15</sup> Thus, the assertion Petitioners attribute, incorrectly, to Mr. Gundersen in their Reply is unsupported and fails to raise a genuine dispute on a material issue of law or fact.

### III. CONCLUSION

As demonstrated above, Petitioners are not permitted to raise new issues in reply, and have not satisfied the late-filed contention standards in 10 C.F.R. § 2.309(c). Additionally, Petitioners' new claim is unsupported and fails to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. §§ 2.309(f)(1)(v) and (vi). For these reasons, and for all of the reasons set forth in Entergy's Answer and further explained at oral argument, Entergy respectfully requests that the Board deny the Petition.

Respectfully submitted,

Signed (electronically) by Raphael P. Kuyler

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*Counsel for Entergy Nuclear Operations, Inc.*

Dated in Washington, DC  
this 6th day of April 2015

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(showing the same); 10-1 to 10-2 (listing the source documents containing further information regarding the materials).

<sup>15</sup> See *USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006); see also 10 C.F.R. § 2.309(f)(1)(vi); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (holding that, to raise a genuine dispute, a petitioner must read the pertinent portions of the license application and state the applicant's position and the petitioner's opposing view).

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of the foregoing “Entergy’s Brief in Response to New Issue Raised in Petitioners’ Reply” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

*Signed (electronically) by Raphael P. Kuyler*

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