

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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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. October 1, 2015
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**STATE OF NEW YORK AND RIVERKEEPER JOINT ANSWER TO
ENTERGY'S MOTION TO STRIKE AND MOTION IN LIMINE**

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PRELIMINARY STATEMENT

The Board should deny Entergy's recent in limine motion and motion to strike ("Entergy MIL") challenging Intervenors' September pre-trial submissions. Entergy's motion seeks to strike a portion of the State of New York's September 9, 2015 Supplemental Reply Statement of Position on Contention NYS-25 ("Reply SOP") (NYS000568) that criticizes Entergy's lack of plans to address an Indian Point 3 reactor vessel plate ("Plate B2803-3") which is expected to exceed the pressurized thermal shock screening criteria prior to the end of the renewal license period. The motion also seeks to exclude portions of Dr. Joram Hopenfeld's September 9, 2015 Report in Response to Entergy and NRC Staff Testimony regarding Contention NYS-26B/RK-TC-1B and Amended Contention NYS-38/RK-TC-5 ("Hopenfeld Response Report") (RIV000161) that address Entergy's failure to ensure adequate aging management of tube-to-tubesheet welds, the improperly limited scope of Entergy's fatigue analyses, and Entergy's inadequate reliance on CUFs of Record in connection with its refined metal fatigue evaluations. As discussed in greater detail below, Entergy's motion lacks merit and should be denied in its entirety.

With respect to Entergy's challenge to the State's Reply SOP, that challenge is too late, overlooks previous submissions where the State raised such issues, and ignores the fact that Entergy presented information on the issue in its own submission to which the State replied. Even if the State's Reply SOP were the proper subject of a motion to strike, the State's discussion of the potential embrittlement concerns regarding Plate B2803-3 is, in any event, well within the scope of the State's Contention NYS-25 and the bases supporting that contention. Despite Entergy's assertions to the contrary, the State's discussion of Plate B2803-3 is not new. The State has voiced its concerns over embrittlement of the reactor vessel and associated

internals throughout this proceeding, and has specifically identified its concerns for Plate B2803-3 in pre-filed testimony in at least five prior filings, none of which were the subject of a motion to strike. Finally, the State's discussion of Plate B2803-3 directly responds to an issue raised by Entergy witnesses in their August 10, 2015 pre-filed testimony. Entergy's motion is therefore an untimely and improper attempt to limit the State's testimony and briefs to issues of Entergy's own choosing.

The Board should also deny Entergy's motion with respect to Dr. Hopenfeld's Response Report. First, contrary to Entergy's arguments, Dr. Hopenfeld has not improperly critiqued an NRC-approved license amendment, but rather pointed to Entergy's failure to ensure adequate aging management of tube-to-tubesheet welds. Second, Dr. Hopenfeld's statements regarding Entergy's improperly limited scope of fatigue analysis do not constitute an improper challenge to the Indian Point current licensing basis, since Dr. Hopenfeld's statements relate directly to the inadequacy of Entergy's aging management program for metal fatigue during Entergy's proposed license renewal periods. Third and lastly, Dr. Hopenfeld's criticisms of Entergy's reliance on "Cumulative Usage Factors of Record" ("CUFs of Record") are not improper attacks on the Indian Point current licensing basis ("CLB"), since such criticisms are directly connected to the fatigue analyses Entergy conducted for license renewal, and concern Entergy's failure to adequately account for relevant plant parameters in such CUF_{en} fatigue evaluations.

ARGUMENT

I. ENTERGY'S MOTION TO STRIKE A PORTION OF THE STATE'S REPLY STATEMENT OF POSITION SHOULD BE DENIED.

Entergy's motion to strike a portion of the State's September 9, 2015 Reply Statement of Position in support of Contention NYS-25 is an improper and untimely attempt to blunt the

State's critique of Entergy's aging management program and limit the State's discussion of a critical reactor vessel embrittlement issue. The State's Reply SOP asserts that:

Finally, Entergy's submissions confirm that it still has not taken affirmative steps to deal with an RPV plate in IP3 that is expected to exceed the pressurized thermal shock (PTS) screening criteria. Entergy's witnesses note that one of the lower shell plates, B2803-3, in IP3 is expected to exceed the PTS screening criteria by 9.5 during the PEO. Ent. PFT on NYS-25, at 148-150 (Exh. ENT000616). Entergy has known about this problem since it submitted its LRA in 2007, and flagged the issue in Appendix A, § A.3.2.1.4 of the LRA. Nonetheless, Entergy's witnesses state that Entergy has still not taken any affirmative steps to address this problem, agreeing only to monitor the plate and making a nebulous commitment to "submit a plant-specific safety analysis" for the plate three years before it exceeds the PTS screening criteria. Ent. PFT on NYS-25, at 149 (Exh. ENT000616). This commitment is indicative of Entergy's entire approach to safety, which is to wait for problems to appear before addressing them, and – even when a problem is apparent – commit only to monitor and study the problem, rather than fix it.

Reply SOP at 12-13. Entergy asserts that the State's discussion of reactor vessel plate B2803-3 is "a new claim that is not part of NYS-25, as pled and admitted by the Board." Entergy MIL at 7. Contention NYS-25 provides, "Entergy's License Renewal Application 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." As set forth in greater detail below, the State's concerns regarding Plate B2803-3 are neither "new" nor "out-of-scope." Rather, the State's discussion of IP3 reactor vessel Plate B2803-3's projected exceedance of the screening threshold for pressurized thermal shock was previously raised in the State's 2011 and 2015 evidentiary submissions, is squarely within the scope of the State's Contention NYS-25 regarding embrittlement of the Indian Point reactor vessels and associated internals, and responds directly to specific claims raised by Entergy witnesses in their pre-filed testimony. Entergy's motion to strike the State's Reply SOP must therefore be denied.

A. The State’s Reply Statement of Position Is an Improper Subject of a Motion to Strike

As an initial matter, the State’s Reply SOP is a legal brief, and as such, is an improper subject of a motion to strike. This Board has already made clear on various occasions that “regarding ... challenge[s] to ... Initial Statement[s] of Position, this document is not evidence, but rather consists merely of attorney arguments. Any motion to strike ‘testimony’ in this document is inappropriate.” *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Order (Granting in Part and Denying in Part Applicant’s Motions in Limine) (Mar. 6, 2012) (“Board Order”) at 14; *see also id.* at 19 (“Statements of positions are not evidence. Thus, the admissibility standards of Section 2.337(a) do not apply and statements of positions are not subject to evidentiary challenge.”). Indeed, Entergy acknowledges as much. Entergy MIL at 6, fn. 23. Accordingly, Entergy’s attempt to expunge portions of the State’s Reply SOP should be summarily rejected.

B. The State’s Pre-trial Submissions Have Previously Raised Concerns Regarding IP3 Plate 2803-3.

Entergy’s failure to note the State’s previously-raised concerns regarding Plate B2803-3’s vulnerability to pressurized thermal shock does not somehow transform the matter into a “new” issue. The record reveals that the State’s expert has discussed this issue in his pre-filed testimony as early as 2011, and most recently in 2015. For example, in his December 2011 pre-filed testimony in support of NYS-25 and NYS-26B/RK-TC-1B, under a subheading entitled “The 2007 LRA and the IP3 Reactor Pressure Vessel,” Dr. Lahey specifically noted that Plate B2803-3 exceeded the screening criteria for PTS. NYS000294 at 30-31; NYSR10344 at 30-31. Dr. Lahey reiterated his concerns in his June 2015 testimony in support of NYS-25 (NYS000482 at 43-44), NYS-26B (NYS000530 at 43-44) and NYS-38/RK-TC-5 (NYS000562 at 47). In fact,

Entergy admits that the State has raised the issue of Plate B2803-3 in at least two filings prior to its September 2015 Reply SOP. Entergy MIL at 9, fn. 39. In essence, Entergy’s motion to strike constitutes a belated attempt to challenge the State’s previously-submitted evidence. Entergy did not file motions in limine or otherwise object to the content of the State’s evidence within the period required under the Board’s Scheduling Order. Entergy should not be permitted to use this motion to strike as a substitute for filing a proper motion in limine, since the time for doing so has long past.¹

In its last-ditch effort to limit the State’s ability to discuss embrittlement issues related to plate B2803-3, Entergy contends that the State’s prior submission of pre-filed testimony on that topic does not serve to enlarge the scope of the State’s contention, citing *Pilgrim*, CLI-10-11, 71 N.R.C. at 309. *Pilgrim*, however, is inapposite. For the reasons described below, the issue of plate embrittlement is squarely within the scope of NYS-25. Even assuming the State’s discussion of Plate B2803-3 raises a “new” issue – which it clearly does not, given the timing and substance of the State’s prior filings – that issue can be “reasonably inferred” from Contention NYS-25 and supporting bases. *See Pilgrim*, 71 N.R.C. at 309. Here, the focus of Contention NYS-25 has been and continues to be Entergy’s failure to manage the effects of embrittlement, including its impact on the reactor vessel’s ability to withstand pressurized thermal shock. Given that much of Dr. Lahey’s statements over the course of this proceeding have discussed thermal shock loads due to severe transients and postulated accidents and the threat they pose to maintaining coolable core geometry, Entergy’s assertion that the Plate B2803-3 issue is a “new” issue is simply wrong.

¹ According to the Board’s Scheduling Order of July 1, 2010, ¶ K.4, motions in limine or to strike were required to be filed within 30 days of service of the materials sought to be stricken or excluded. Under the Board’s December 9, 2014 Scheduling Order, ¶ 7, the period for moving to strike was reduced to 10 days.

C. The State’s Discussion of Plate B2803-3’s Projected Exceedance of NRC Screening Limits for Pressurized Thermal Shock Is Fully Within the Scope of Contention NYS-25.

Entergy incorrectly characterizes the State’s discussion of reactor vessel plate B2803-3 as raising a new, out-of-scope issue. *See* Entergy MIL at 7. As is clear from the language of Contention NYS-25 and its supporting bases, NYS-25 relates to the inadequacy of Entergy’s “plan to monitor and manage the effects of aging due to embrittlement of the reactor pressure vessels ... and the associated internals” and its “time-limited aging analysis.” The issue of whether embrittled vessel plates at Indian Point can withstand pressurized thermal shock during the period of extended operation is a time-limited aging analysis which is plainly within the scope of Contention NYS-25.

While Entergy correctly notes that much of the focus of the State’s Track 2 filings has been on embrittlement of reactor vessel internals,² issues affecting the reactor vessel itself have been and continue to be a concern to the State, as Dr. Lahey’s December 2011 and June 2015 pre-filed testimony on NYS-25, NYS-26B and NYS-38 and the State’s September 2015 Reply SOP make clear. Entergy attempts to bolster its argument that the State’s reference to plate B2803-3 is new because the State’s 2007 filings had identified two IP2 plates (B2002-3 and B2003-1) that would potentially exceed Charpy upper shelf energy (USE) criteria. Entergy MIL at 7; *see* NYS Petition, 226 and November 2007 Lahey Declaration, ¶ 18 (NYS000298). However, those references were illustrative, and did not in any way serve to limit the State’s broader concerns about irradiation embrittlement of other reactor vessel or reactor vessel internal plates or components. Similarly, the State’s allegation that Entergy failed to perform “age-related accident analyses” (*see* November 2007 Lahey Declaration, ¶ 15) served to support,

² This is necessarily so, given the focus of MRP-227A and the SSER2 on aging management of reactor vessel internals.

rather than limit, the State's over-arching claim that Entergy failed to meet its regulatory burden of fully and accurately evaluating all relevant and applicable "time-limited aging analyses."³ Entergy does not dispute that aging management of neutron irradiation embrittlement in the reactor vessel requires consideration of a variety of time limited aging analyses, including: Charpy upper shelf energy, pressure-temperature limits, low-temperature overpressure protection and pressurized thermal shock. *See* Testimony of Entergy Witnesses on NYS-25 at 142-150 (ENT000616). The State's concerns regarding Entergy's wait-and-see approach in dealing with the pressurized thermal shock time-limited aging analysis for IP3's Plate B2803-3 is therefore fully within the scope of Contention NYS-25. Entergy's motion to strike must therefore be denied.

D. Entergy's Discussion of IP3 Pressure Vessel Plate Issues (including Plate B2803-3) in its August 2015 Pre-trial Submissions Precludes it from Challenging the State's Response on Such Issues.

Not only is the State's discussion of Plate B2803-3 within the scope of Contention NYS-25, the discussion of the issue in NYS Reply SOP on NYS-25 was also in direct response to an issue raised by Entergy in its August 10, 2015 filings. *See* Entergy Testimony on NYS-25 at 148-150. Entergy acknowledges that it "provided background testimony summarizing the information regarding the RPV TLAAAs [reactor pressure vessel time-limited aging analyses] in the IPEC LRA [license renewal application] to ensure a complete record and to demonstrate that the LRA complies with 10 C.F.R. Part 54." *See* Entergy Testimony on NYS-25 at 142-150.

Thus, Entergy presented evidence on aging management of vessel embrittlement issues in

³ For example, Dr. Lahey's declaration, paragraph 14 states: "Sections A.2.2 (Evaluation of Time-Limited Aging Analysis - Unit 2) and A.3.2 (Evaluation of Time-Limited Aging Analysis - Unit 3) of Appendix A of the license renewal application briefly mention thermal shock as it relates to the requirement of the licensee to perform an assessment of the projected values of reference temperature whenever a significant change occurs in the projected values of the adjusted reference temperature for pressurized thermal shock (RTPTS). The license renewal application, however, does not indicate if the applicant performed any age-related accident analyses, or if it even took embrittlement into account when assessing the effect of these transient loads."

support of its license renewal application. Yet, it now seeks to preclude the State from even discussing that issue in its Reply SOP. The State is entitled to address in its reply issues raised in Entergy's answering papers. Entergy simply cannot have it both ways. Entergy's motion to strike portions of the State's Reply SOP should therefore be denied.

II. ENTERGY'S MOTION TO EXCLUDE PORTIONS OF DR. HOPENFELD'S REPORT SHOULD BE DENIED.

A. Dr. Hopenfeld's Response Report Does Not Improperly Critique an NRC-Approved License Amendment

Entergy argues that Dr. Hopenfeld's critique of Entergy's failure to adequately consider the effects of metal fatigue on tube-to-tubesheet welds is outside the scope of this proceeding. In particular, Entergy asserts that Dr. Hopenfeld's discussion of a Westinghouse report, WCAP-17091-NP, is allegedly inappropriate, because "Entergy sought and received NRC approval of a license amendment to redefine the RCS pressure boundary for IP2 to exclude the tube-to-tubesheet welds, using the 'H*' methodology" described in WCAP-17091-NP, and that as a result, "any question of the technical basis for the granting of this separate license amendment is a challenge to the IP2 CLB."⁴ However, Dr. Hopenfeld's criticisms of Entergy's purported basis for managing aging of tube-to-tubesheet welds are valid and should not be excluded from consideration in connection with the Track 2 safety contentions.

Dr. Hopenfeld's criticisms of the methodology contained in Westinghouse report WCAP-17091-NP is entirely appropriate, since that document contains the methodology employed by Entergy to justify its redefinition of the RCS pressure boundary to exclude the tube-to-tubesheet welds. Entergy relied on this reactor coolant pressure boundary "redefinition" to allegedly fulfill Commitment 42, the sufficiency of which is the exact subject of Contention NYS-38/RK-TC-5.

⁴ Entergy MIL at 9-11.

While Entergy attempts to hide behind an NRC-approved license amendment to end all consideration of its approach and methodology, in the end, Entergy's "approach" for managing aging of PWSCC in the steam generator tube-to-tubesheet welds boils down to excluding tube-to-tubesheet welds from inspection. The adequacy of this approach is the subject of NYS-38/RK-TC-5 and evidence questioning the adequacy of this approach is, thus, entirely appropriate.

In any event, Dr. Hopenfeld's discussion of the flawed methodology employed by Entergy to justify its exclusion of tube-to-tubesheet welds from further analysis and appropriate aging management relates directly and unambiguously to Dr. Hopenfeld's criticisms of Entergy's program for managing *metal fatigue* for various systems, structures and components at Indian Point during the proposed periods of extended operation. In particular, Dr. Hopenfeld discusses WCAP-17091-NP in connection with his opinion that Entergy has failed to demonstrate that *metal fatigue* of tube-to-tubesheet welds will be adequately managed in light of synergistic aging effects. Dr. Hopenfeld questions Entergy's attempt to reduce the inspection frequency of tube-to-tubesheet welds in light of the high CUF_{en} values indicated for such components.⁵ Such criticisms of Entergy's program for managing metal fatigue at Indian Point fall directly within the ambit of the admitted contention, and are clearly within the scope of this proceeding. Thus, Entergy's motion to "strike Dr. Hopenfeld's critique of WCAP-17091-NP, as identified in Attachment 1, Table B" of Entergy's motion, should be denied.

⁵ See Report of Dr. Joram Hopenfeld In Response to Entergy and NRC Staff Testimony Regarding Contention NYS-26/RK-TC-1B and Amended Contention NYS-38/RK-TC-5 (September 9, 2015) (Exhibit RIV000161), at 15.

B. Dr. Hopenfeld's Response Report Does Not Inappropriately or Directly Challenge the Adequacy of the Current Licensing Basis

Entergy next argues that Dr. Hopenfeld's position that Entergy has failed to adequately expand the scope of its EAF analyses to include other primary plant components and balance-of-plant components is a "direct challenge to the adequacy of the CLB" and "therefore outside the scope of this license renewal proceeding and irrelevant to the hearing on Contentions NYS-26B/RK-TC-1B and NYS-38/RK-TC-5."⁶ Entergy has made this argument once before. Entergy points to a motion to strike it filed in 2013⁷ with respect to Dr. Hopenfeld's earlier, similar and related, testimony on Contention NYS-38/RK-TC-5,⁸ and requests that the ASLB grant that motion and similarly exclude Dr. Hopenfeld's most recent statements in his September 9, 2015 Response Report regarding the scope of Entergy's EAF analyses.⁹ However, once again, the objected to portions of Dr. Hopenfeld's Response Report are not outside the scope of the proceeding, since they relate directly to Entergy's commitment for managing metal fatigue *during the proposed period of extended operation* and to the adequacy of Entergy's aging management program for metal fatigue.

Entergy's ongoing attempt to assert its argument to limit the testimony and evidence presented by Dr. Hopenfeld must be rejected for the same reasons set out in Riverkeeper's previous submissions on this issue.¹⁰ In sum, the discussion in Dr. Hopenfeld's Response Report

⁶ Entergy MIL at 11-13.

⁷ Entergy's Motion to Strike Portions of Intervenors' Revised Statement of Position and Motion in Limine to Exclude Portions of the Prefiled Rebuttal Testimony and Exhibits for Contention NYS-38/RK-TC-5 (Safety Commitments) (Jan. 7, 2013), *available at* ADAMS Accession No. ML13007A515, later corrected on January 25, 2013, *available at* ADAMS Accession No. ML13025A245.

⁸ Prefiled Rebuttal Testimony of Dr. Joram Hopenfeld Regarding Contention NYS-38/RK-TC-5 at 6 (Nov. 9, 2012) (RIV000134).

⁹ Entergy MIL at 11-13.

¹⁰ *See* State of New York and Riverkeeper, Inc. Answer to January 7, 2013 Motions in Limine filed by Entergy and NRC Staff to Strike Various Intervenors' Pre-Filed Submissions in Support of Contention NYS-38/RK-TC-5 (January 17, 2013), ADAMS Accession No. ML13017A562, at 17-21.

to which Entergy objects, once again, stems directly from his position with regard to how Entergy should conduct an adequate analysis to determine the most limiting locations for metal fatigue analysis at Indian Point, which relates directly to the adequacy of Entergy's commitment concerning metal fatigue.¹¹ Thus, Dr. Hopenfeld's opinions relating to the screening and consideration of components without existing CUF values is neither outside the scope of the contention, or the proceeding.¹² Thus, Entergy's motion to strike Dr. Hopenfeld's statements related to the adequacy of Entergy's program for managing metal fatigue of secondary-side plant components should be denied.

C. Dr. Hopenfeld's Response Report Does Not Improperly Challenge Design Basis Fatigue Calculations

Lastly, Entergy argues that Dr. Hopenfeld's discussion of Entergy's inadequate reliance on Cumulative Usage Factors of Record constitutes a challenge that is outside the scope of both the admitted contention and this license renewal proceeding.¹³ However, Entergy's arguments, which it has attempted to make in the past to no avail, must once again be rejected, since Dr. Hopenfeld's criticisms of Entergy's reliance on CUFs of Record to determine CUF_{en} values is entirely relevant and appropriate.

In particular, Dr. Hopenfeld's discussion of CUFs of Record are neither a direct challenge to such CUFs of Record nor a challenge to the CLB. Rather, it is a challenge to Entergy's failure to adequately account for relevant parameters in its refined metal fatigue evaluations in light of its reliance on CUFs of Record. That is, Dr. Hopenfeld's criticisms relate

¹¹ See *id.*; See Report of Dr. Joram Hopenfeld In Response to Entergy and NRC Staff Testimony Regarding Contention NYS-26/RK-TC-1B and Amended Contention NYS-38/RK-TC-5 (September 9, 2015) (Exhibit RIV000161), at 12-13.

¹² See State of New York and Riverkeeper, Inc. Answer to January 7, 2013 Motions in Limine filed by Entergy and NRC Staff to Strike Various Intervenors' Pre-Filed Submissions in Support of Contention NYS-38/RK-TC-5 (January 17, 2013), ADAMS Accession No. ML13017A562, at 17-21.

¹³ Entergy MIL, at 13-16.

squarely to Entergy's refined EAF analyses, which indisputably concern the effect of metal fatigue *during* the proposed license renewal periods for Indian Point Units 2 and 3.¹⁴ Thus, such criticisms are entirely relevant and appropriate.

As previously stated in response to similar arguments from Entergy, it is well established that "the CLB itself is relevant to the extent that a plant's current practices will form part of its aging management program during the license renewal term," and licensing boards should not "exclude evidence merely because it touches upon Entergy's CLB."¹⁵ Indeed, this Licensing Board has specifically explained:

specific CLB analyses define the current practices of the Applicant that relate to similar calculations that will be performed as part of Entergy's AMP for metal fatigue. They are an appropriate subject for review in this license renewal proceeding. The degree of the relevance between the CLB analyses and those proposed in the Applicant's AMP is a merits question that can only be determined by weighing all the evidence on this topic. Resolution of this question will be best served after all the testimony has been filed and this issue is probed during the adjudicatory hearing.¹⁶

Once again, the specific CUF of Record analyses Dr. Hopenfled refers to are relevant to a discussion of Entergy's refined analyses, which Entergy uses to justify the adequacy of its program for managing metal fatigue. Thus, Dr. Hopenfled's discussion of CUFs of Record directly in relation to Entergy's failure to appropriately adjust its fatigue assessments, is an appropriate subject in this license renewal proceeding. Simply because Dr. Hopenfled's

¹⁴ See Report of Dr. Joram Hopenfled In Response to Entergy and NRC Staff Testimony Regarding Contention NYS-26/RK-TC-1B and Amended Contention NYS-38/RK-TC-5 (September 9, 2015) (Exhibit RIV000161), at 17-18; see also Riverkeeper, Inc. Opposition to Entergy's Motion in Limine to Exclude Portions of Pre-filed Testimony, Expert Report, Exhibits, and Statement of Position for Contention NYS-26B/RK-TC-1B (Metal Fatigue) at 10-11 (Feb. 17, 2012) at 10-13.

¹⁵ *In the Matter of Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), Docket Nos. 50-271-LR, ASLBP No. 06-849-03-LR, Order (Ruling on Motions to Strike and Motions in Limine), July 16, 2008, at 10; see also Riverkeeper, Inc. Opposition to Entergy's Motion in Limine to Exclude Portions of Pre-filed Testimony, Expert Report, Exhibits, and Statement of Position for Contention NYS-26B/RK-TC-1B (Metal Fatigue) at 10-11 (Feb. 17, 2012) at 11.

¹⁶ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Order (Granting in Part and Denying in Part Applicant's Motions in Limine) (March 6, 2012), at 15-16, (unpublished) ML12066A170.

Response Report includes his opinions about Entergy's reliance on CUFs of Record does not mean that his report constitutes an impermissible challenge to the CLB. Contrary to Entergy's arguments, Dr. Hopenfeld does not make "unambiguous challenges to the CLB"¹⁷ but rather explicit challenges to Entergy's EAF analyses, which pertain directly to aging management of metal fatigue during the proposed license renewal periods.¹⁸ In any event, this issue is best served by weighing all the evidence at an adjudicatory hearing.

Thus, Entergy's motion to strike Dr. Hopenfeld's statements related to CUFs of Record should be denied.

CONCLUSION

For the foregoing reasons, Entergy's motion to strike a portion of the State's SOP and motion in limine to exclude portions of Dr. Hopenfeld's Response Report should be denied in its entirety.

Respectfully submitted,

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¹⁷ Entergy MIL, at 15.

¹⁸ See Report of Dr. Joram Hopenfeld In Response to Entergy and NRC Staff Testimony Regarding Contention NYS-26/RK-TC-1B and Amended Contention NYS-38/RK-TC-5 (September 9, 2015) (Exhibit RIV000161), at 17-18.

10 C.F.R. § 2.323 Certification

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 Scheduling Order (at 8-9), that with respect to the NRC Staff's Motion for Reconsideration I certify that I have made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.

Signed (electronically) by _____

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