

May 2, 2016

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 51st 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 51st monthly status report to the Board.

Safety Issues

1. Track 2 Safety Issues. Hearings on the three "Track 2" safety contentions related to the License Renewal Application ("LRA") for Indian Point Units 2 and 3 ("IP2" and "IP3") were held on November 16-19, 2015. On February 5, 2016, the State of New York ("New York") filed a motion seeking the late admission of six documents as exhibits related to the Track 2 contentions; answers were filed on February 16, 2016.¹ On February 19, 2019, the Board granted New York's Motion, conditioned upon its filing of expert testimony demonstrating

¹ "State of New York Motion for Leave to File Six Documents as Additional Exhibits" (Feb. 5, 2016); "NRC Staff Answer to 'State of New York Motion for Leave to File Six Documents as Additional Exhibits'" (Feb. 16, 2016); "Entergy's Answer to State of New York Motion for Leave to File Six Documents as Additional Exhibits" (Feb. 16, 2016).

the relevance, materiality and reliability of the proposed exhibits.² New York filed its supplemental testimony on March 4, 2016; Entergy and the Staff filed responsive testimony on March 18, 2016. The filing of New York's reply testimony has been deferred pending the parties' submittal of updated information regarding IP2 baffle bolt inspections.³ The filing of proposed findings of fact and conclusions of law has been suspended pending the Board's receipt of the parties' supplemental testimony.⁴ The evidentiary record is to be closed within 10 days after the filing of all supplemental testimony, unless the Board determines that it requires additional testimony on the proposed exhibits.⁵

2. Baffle-Former Assembly Bolt Inspection Findings. On March 29, 2016, the Applicant notified the Board and parties that (a) its ongoing inspection of baffle-former assembly bolts in the Indian Point Unit 2 ("IP2") reactor pressure vessel had identified "indications" and other degradation requiring replacement of 227 of 832 baffle-former bolts; (b) it was reporting this event to the NRC pursuant to 10 C.F.R. § 50.72; (c) it has entered its inspection findings into its Corrective Action Program and is taking appropriate corrective actions; and (d) it would initiate consultations among the parties to discuss the potential impact of these findings on the adjudication of Contentions NYS-25 and NYS-38/RK-TC-5.⁶ On March 30, 2016, the parties filed a joint motion requesting the temporary deferral of further

² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Requesting Expert Testimony on New York's Proposed Exhibits and Suspending Deadline for Filing Proposed Findings of Fact and Law)" (Feb. 19, 2016).

³ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Granting New York's Motion for Extension of Time)" (Mar. 15, 2016). See discussion *infra*.

⁴ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Setting Post-Hearing Briefing Schedule)" (Dec. 7, 2015)

⁵ Order of February 19, 2016, at 3.

⁶ Letter from Paul M. Bessette, Esq. to the Board ("Licensing Board Notification of Preliminary Indian Point Unit 2 Baffle-Former Assembly Bolt Inspection Findings") (Mar. 29, 2016).

filings, including New York's supplemental reply testimony.⁷ On April 1, 2016, the Board granted that motion, deferring the scheduling of post-hearing filings and further evidentiary submissions for a minimum of 35 days, and requiring the parties to file an updated status report no later than May 6, 2016.⁸ The parties expect to discuss the required filing on May 3, 2016.

3. Other Safety Issues. There has been no change in this item since the Staff filed its previous status report. The Staff is reviewing issues associated with two recent Interim Staff Guidance ("ISG") documents (LR-ISG-2012-02 and LR-ISG-2013-01).⁹ 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

4. FSEIS Supplement. There has been no change in this item since the Staff filed its previous status report. On December 22, 2015, the Staff issued its draft second supplement (Volume 5) to the Final Supplemental Environmental Impact Statement ("FSEIS") for license renewal of IP2 and IP3.¹⁰ Public comments have been filed and are currently under review by the Staff. As stated previously, the Staff expects to issue Final Supplement 2 to the FSEIS in September 2016.¹¹

⁷ "Joint Motion for Track 2 Hearing Schedule Deferral" (Mar. 30, 2016).

⁸ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), "Order (Adopting Joint Motion for Track 2 Hearing Schedule Deferral)" (Apr. 1, 2016).

⁹ 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).

¹⁰ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment," NUREG-1437, Supplement 38, Vol. 5 (Dec. 2015) ("Draft FSEIS Supplement 2"). See Letter from Sherwin E. Turk to the Board (Dec. 22, 2015), at 1.

¹¹ See Letter from Sherwin E. Turk to the Board (Dec. 22, 2015), at 2.

5. Contention NYS-35/36. There has been no change in this item since the Staff filed its previous status report. On June 30, 2010, the Board issued LBP-10-13, in which it, *inter alia*, admitted Contentions NYS-35 and NYS-36, and consolidated them into Contention NYS-35/36.¹² On July 14, 2011, the Board issued LBP-11-17, granting summary disposition on Contention NYS-35/36 (Implementation of Cost-Beneficial SAMAs) in favor of New York.¹³ 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.¹⁴ As required, the Staff filed its response on March 30, 2015; replies were filed by Entergy and New York on May 11, 2015.

6. Contention NYS-40. In May 2013, the Applicant submitted 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 that it was submitting the information "to support resolution of certain issues identified" in LBP-11-17, concerning Contention NYS-35/36. The Staff presented its evaluation of the information in Draft FSEIS Supplement 2, issued on December 22, 2015. On February 22, 2016, New York filed a motion for leave to file new Contention NYS-40, asserting that the Staff's Draft FSEIS Supplement was deficient in concluding that cost-beneficial SAMAs that do not relate to managing the effects of aging need not be implemented as a condition for license

¹² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-10-13, 71 NRC 673 (2010).

¹³ *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 217 (Feb. 18, 2015).

¹⁴ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-3, 81 NRC 217 (Feb. 18, 2015).

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).

renewal;¹⁶ answers to Contention NYS-40 were filed by Entergy and the Staff on March 18, 2016; New York filed its reply on March 25, 2016.¹⁷ On April 5, 2016, the Commission directed the Board “to hold the contention in abeyance pending further order of the Commission.”¹⁸

7. 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 on April 28, 2014, New York filed a petition for review of the Board’s Order denying its motion to reopen and reconsider that decision.²¹ On February 18, 2015, the Commission granted New York’s petition for review and directed the 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 were

¹⁶ See “State of New York Motion for Leave [to File] Contention NYS-40” (Feb. 22, 2016), and “State of New York Contention NYS-40” (Feb. 22, 2016). See also *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Order (Granting Entergy’s Motion [for] Clarification)” (July 9, 2013), at 3.

¹⁷ See (1) “NRC Staff’s Answer to State of New York’s Motion for Leave to File Contention NYS-40” (Mar. 18, 2016); (2) “Entergy’s Opposition to Proposed New York State Contention NYS-40 Regarding Severe Accident Mitigation Alternatives” (Mar. 18, 2016); and (3) “State of New York Reply in Support of Contention NYS-40” (Mar. 25, 2016).

¹⁸ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Order” (Apr. 5, 2015).

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). On March 9, 2015, the Commission issued a Memorandum and Order resolving the Staff’s, Entergy’s and Hudson River Sloop Clearwater’s 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 340 (2015) (reversing the Board’s resolution of Contention NYS-8 (Transformers), and reversing in part, and affirming in part, its resolution of Contention CW-EC3A (Environmental Justice)).

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); (2) “Order (Denying New York’s Motion to Reopen the Record; Setting Deadline for New or Amended Contention)” (Apr. 1, 2014).

²² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-15-2, 81 NRC 213 (Feb. 18, 2015).

filed by the Staff, Entergy and New York on April 29, 2015. The Commission has tentatively scheduled an Affirmation Session regarding this matter for May 4, 2016 at 9:25 AM.

8. Contention RK-EC-11. On March 8, 2016, Riverkeeper, Inc. filed a new contention (Contention RK-EC-11), asserting that the Staff's Draft FSEIS Supplement improperly relies upon the Commission's Continued Storage Rule and the Continued Spent Fuel Storage GEIS.²³ Answers to Riverkeeper's new contention were filed by Entergy and the Staff on April 4, 2016.²⁴

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/

Sherwin E. Turk
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 287-9194
E-mail: Sherwin.Turk@nrc.gov

Dated at Rockville, Maryland
this 2nd day of May 2016

²³ See (1) "Riverkeeper's Request for Admission of New Environmental Contention" (Mar. 8, 2016); (2) letter from Paul Gallay, Esq., to the Board (Mar. 9, 2016).

²⁴ See (1) "NRC Staff's Answer to Riverkeeper's Request for Admission of New Environmental Contention (Contention RK-EC-11)" (Apr. 4, 2016); (2) "Entergy's Opposition to Riverkeeper's Proposed 'Placeholder' Contention RK-EC-11 Concerning the Continued Storage Rule)" (Apr. 4, 2016).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
(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 51st STATUS REPORT IN RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD’S ORDER OF FEBRUARY 16, 2012,” dated May 2, 2016, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 2nd day of May 2016.

/Signed (electronically) by/

Sherwin E. Turk
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555
Telephone: (301) 287-9194
E-mail: Sherwin.Turk@nrc.gov