

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 13, 2017

ORDER

(Granting Motion to Dismiss Contentions and to Terminate This Proceeding)

Pending before this Board is a motion jointly filed by the State of New York (New York) and Riverkeeper, Inc. (Riverkeeper) (collectively, Intervenors) seeking to dismiss the remaining contentions and to terminate this proceeding. By granting this motion, we will bring to an end litigation that has been ongoing for almost 10 years and which raised numerous significant safety and environmental issues.

This proceeding arises out of the April 23, 2007, application of Entergy Nuclear Operations, Inc. (Entergy) to renew its 10 C.F.R. Part 50 operating licenses for Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3) located in Buchanan, New York.¹ As originally

¹ 72 Fed. Reg. 26,850 (May 11, 2007).

proposed, the renewed licenses would have authorized Entergy to operate IP2 and IP3 for a period of twenty years beyond the period specified in the original operating licenses.²

The admitted contentions remaining before this Board, which have been referred to as the Track 2 safety contentions are, in brief, as follows:

1. Contention NYS-25:³ Challenges the adequacy of Entergy's aging management program for reactor vessel internals.
2. Consolidated Contention NYS-26B/RK-TC-1B:⁴ Challenges the adequacy of Entergy's aging management program for metal fatigue.
3. Consolidated Contention NYS-38/RK-TC-5: Challenges whether the NRC had a sufficient record on which to make a decision about license renewal when certain details of aging management programs were deferred.

I. PROCEDURAL HISTORY

A. Pre-Track 2 Hearing Disposition of Admitted Contentions

The Track 1 contentions were the subject of an evidentiary hearing in Westchester County, New York, from October 15–24, 2012.⁵ Those contentions were resolved in this Board's first Partial Initial Decision.⁶ Subsequent to the issuance of the Partial Initial Decision,

² Id. Pursuant to 10 C.F.R. § 2.109(b), IP2 and IP3 may continue to operate pending this adjudication.

³ Contentions beginning with "NYS" were submitted by the State of New York.

⁴ Contentions beginning with "RK" were submitted by Riverkeeper, Inc. The letters "TC" indicate that the contention was proffered as a technical contention, as opposed to an environmental contention (EC).

⁵ 77 Fed. Reg. 36,015, 36,016 (June 15, 2012).

⁶ See LBP-13-13, 78 NRC 246. For discussion of those admitted contentions resolved prior to the Track 1 hearing, see id. at 268.

six admitted contentions remained before the Board: NYS-39/RK-EC-9/CW-EC-10, CW-SC-4, RK-EC-8, NYS-25, NYS-26B/RK-EC-1B, and NYS-38/RK-EC-5.⁷

Consolidated Contention NYS-39/RK-EC-9/CW-EC-10⁸ argued that the Final Supplemental Environmental Impact Statement (FSEIS) supporting the license renewal was deficient because it did not include an analysis of the environmental impacts of long-term storage of nuclear waste onsite at Indian Point.⁹ Contention CW-SC-4 similarly challenged the application for providing an insufficient analysis of the aging management of spent fuel pools that would be used for onsite storage of nuclear waste.¹⁰

Prior to the Track 1 hearing, both of these contentions were placed in abeyance at the direction of the Commission.¹¹ The Commission then adopted the Continued Storage Rule, which codified the NRC's generic determinations regarding the pertinent environmental impacts associated with continued storage of spent nuclear fuel.¹² In a 2014 ruling, the Commission stated that to the extent Contentions CW-SC-4 and NYS-39/RK-EC-9/CW-EC-10 raised issues resolved by the Continued Storage Rule, the Indian Point Board was directed to dismiss them, and if issues raised in those contentions remained unresolved by the Commission's actions, to

⁷ See id. app. A.

⁸ Contentions beginning with the letters "CW" were submitted by Hudson River Sloop Clearwater, which is not a party to any of the remaining Track 2 contentions.

⁹ LBP-13-13, 78 NRC 246 app. A at 548.

¹⁰ Id. app. A at 550.

¹¹ See Licensing Board Order (Holding Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4 in Abeyance) (Aug. 8, 2012) (unpublished) (citing Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 68–69 (2012)).

¹² See Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Servs., LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79–80 (2014).

rule on admissibility of those challenges to license renewal.¹³ Following briefing by the participants,¹⁴ the Board dismissed both contentions.¹⁵

Contention RK-EC-8 challenged the FSEIS as deficient because of inadequate consultation with the National Marine Fisheries Service under the Endangered Species Act.¹⁶ After the NRC Staff issued a new supplement to the FSEIS in 2013, Riverkeeper filed a motion to amend RK-EC-8 based on new information in the supplement,¹⁷ while Entergy filed a motion seeking to use that same new information to have RK-EC-8 dismissed as moot.¹⁸ The Board denied Riverkeeper's motion and ruled in favor of Entergy, finding RK-EC-8 moot and therefore removing it from consideration in this proceeding.¹⁹

We also note here the results of several appeals decided by the Commission in this proceeding. The Board granted summary disposition on consolidated Contention NYS-35/36, which concerns the implementation of cost-beneficial severe accident mitigation alternatives (SAMAs), in favor of New York, as discussed in the Track 1 Partial Initial Decision.²⁰ Entergy

¹³ Id.

¹⁴ Licensing Board Order (Requesting Briefs on NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4) (Sept. 17, 2014) (unpublished).

¹⁵ Licensing Board Order (Dismissing Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4) (Nov. 10, 2014) (unpublished).

¹⁶ LBP-13-13, 78 NRC 246 app. A at 549. See also Riverkeeper Inc. Consolidated Motion For Leave To File a New Contention and New Contention Concerning NRC Staff's Final Supplemental Environmental Impact Statement (Feb. 3, 2011).

¹⁷ Riverkeeper, Inc. Consolidated Motion For Leave To File Amended Contention RK-EC-8A and Amended Contention RK-EC-8A (Aug. 20, 2013).

¹⁸ Entergy Motion to Dismiss Riverkeeper Contention RK-EC-8 (Endangered and Threatened Aquatic Species) as Moot (Jul. 17, 2013).

¹⁹ Licensing Board Order (Denying Riverkeeper's Motion and Granting Entergy's Motion Addressing RK-EC-8A) at 3, 5 (Apr. 2, 2014) (unpublished).

²⁰ See LBP-13-13, 78 NRC at 268–69.

and the NRC Staff then appealed to the Commission both the order admitting NYS-35/36 and the order granting summary disposition.²¹ The Commission reversed the Board's order and granted summary disposition in favor of the NRC Staff and Entergy, dismissing NYS-35/36.²² Additionally, the Commission reversed the Board's decision in the Track 1 Partial Initial Decision with respect to Contention NYS-8 (Transformers), overruling in favor of Entergy the Board's factual determination that transformers are a passive component requiring a plan for aging management, and affirmed in part and reversed in part our decision with respect to Contention CW-EC-3A (Environmental Justice), finding in favor of Entergy and the Staff that the emergency planning environmental justice issues raised by Hudson River Sloop Clearwater (Clearwater) were outside the scope of license renewal.²³

The Commission also took up New York's appeal of Contention NYS-12C concerning SAMA calculations,²⁴ which the Board resolved in favor of Entergy in the Track 1 Partial Initial Decision,²⁵ and which the Board also declined to reopen and reconsider.²⁶ The Commission reversed the Board's decision and directed the Staff to perform further sensitivity analyses related to certain parameters used in the SAMA calculations.²⁷

²¹ 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) at 43–60; NRC Staff's Petition for Commission Review of LBP-13-13 In Part (Contentions NYS-8 and CW-EC-3A), and LBP-11-17 (Contentions NYS-35/36) (Feb. 14, 2014) at 41–59.

²² CLI-16-10, 83 NRC 494, 496 (2016).

²³ CLI-15-6, 81 NRC 340, 351–52, 386 (2015).

²⁴ LBP-08-13, 68 NRC 43, 100 (2008).

²⁵ See LBP-13-13, 78 NRC at 450–74.

²⁶ Licensing Board Order (Denying New York's Motion to Reopen the Record; Setting Deadline for New or Amended Contention) (Apr. 1, 2014) (unpublished).

²⁷ CLI-16-7, 83 NRC 293, 323 (2016).

As a result of these actions, three contentions, NYS-25, NYS-26B/RK-TC-1, and NYS-38/RK-TC-5, remained under consideration by the Board. As such, the only intervenors remaining active in the proceeding are New York and Riverkeeper.

B. Track 2 Evidentiary Hearing

In April 2015, the Board issued a Notice of Hearing, which announced that we would begin taking oral testimony on the three Track 2 contentions on November 16, 2015, in Tarrytown, New York.²⁸ Pursuant to the Board's Revised Scheduling Order, the parties timely filed updated statements of position, testimony, and exhibits in support of the three remaining Track 2 contentions in advance of the hearing. Intervenors' separate submissions were filed in June 2015 and the NRC Staff's and Entergy's in August 2015. Intervenors filed rebuttal testimony and exhibits in September.²⁹

The Track 2 hearing was held in Tarrytown, New York on November 16-19, 2015.³⁰

C. Delays in Issuance of Track 2 Partial Initial Decision

On March 29, 2016, Entergy notified the Board that during the scheduled maintenance outage that commenced on March 7, 2016, Entergy conducted visual and ultrasonic testing of the baffle-former assembly bolts in IP2, revealing that approximately 25% of the baffle-former bolts showed signs of degradation.³¹ This level of degradation was much higher than the

²⁸ Notice of Hearing (Scheduling Track 2 Hearing) (Apr. 23, 2015) (unpublished).

²⁹ Licensing Board Revised Scheduling Order (Dec. 9, 2014) (unpublished). New York was granted eight additional days from the deadline set in the Revised Scheduling Order to file these documents. See Licensing Board Order (Granting New York's Motion for an Eight-Day Extension of the Filing Deadline) (May 27, 2015) (unpublished).

³⁰ 80 Fed. Reg. 60,719 (Oct. 7, 2015).

³¹ Letter from Paul M. Bessette, Counsel for Entergy Nuclear Operations, Inc., to ASLB, Re: Licensing Board Notification of Preliminary Indian Point Unit 2 Baffle-Former Assembly Bolt Inspection Findings, at 1–2 (Mar. 29, 2016).

industry-wide 1.5% rate of baffle-former bolt failure to which witnesses had testified.³² As a result of these observations, on March 30, 2016, the parties filed a Joint Motion asking the Board to defer for thirty-five days the Track 2 hearing schedule, including post-hearing filings, evidentiary submissions, and the issuance of the Board's decision.³³ The Board granted that motion on April 1, 2016.³⁴ The parties then filed two additional Joint Status Reports requesting schedule deferrals as they performed additional analyses,³⁵ both of which were granted by the Board.³⁶

On June 28, 2016, the parties filed a Third Joint Status Report, in which they again asked this Board to delay the Track 2 proceedings to allow the parties to file testimony regarding baffle-former bolt issues.³⁷ In that report, Entergy informed the Board that it planned to send cracked baffle-former bolts removed from IP2 to a "hot lab" facility for testing.³⁸ Entergy stated that it planned to have three of these bolts analyzed and expected the results by October

³² NRC Staff Testimony of Dr. Allen Hiser, Jeffrey Poehler, and Gary Stevens on NYS-25 and NYS-38/RK-TC-5 at 135 (Aug. 10, 2015) (Ex. NRC000197). See also Testimony of Entergy Witnesses Nelson F. Azevedo, Robert J. Dolansky, Alan B. Cox, Jack R. Strosnider, Timothy J. Griesbach, Randy G. Lott, and Mark A. Gray Regarding Contention NYS-25 (Embrittlement) at 100 (Aug. 10, 2015) (Ex. ENT000616).

³³ Joint Motion for Track 2 Hearing Schedule Deferral at 5 (Mar. 30, 2016).

³⁴ Licensing Board Order (Adopting Joint Motion for Track 2 Hearing Schedule Deferral) (Apr. 1, 2016) (unpublished).

³⁵ See Joint Status Report Regarding Track 2 Schedule Deferral (May 6, 2016) at 1; Second Joint Status Report Regarding Track 2 Schedule Deferral (June 7, 2016).

³⁶ See Licensing Board Order (Adopting Track 2 Hearing Schedule Deferral at Request of the Parties) (May 10, 2016) (unpublished); Licensing Board Order (Adopting Schedule Deferral at Request of the Parties and Requesting Conference Call Availability) (June 8, 2016) (unpublished).

³⁷ Third Joint Status Report Regarding Proposed Track 2 Schedule (June 28, 2016).

³⁸ Id. at 3.

2016.³⁹ Recognizing the safety significance of these baffle-former bolt issues, the Board reluctantly agreed to delay the Track 2 proceeding and accepted the parties' requested schedule for filing of further testimony and evidence.⁴⁰

On October 14, 2016, Entergy notified the Board that planned hot cell testing of three baffle-former bolts removed from IP2 had been conducted and that, based on those results, it would test five additional bolts with the results of those tests anticipated in November 2016.⁴¹ Intervenor then filed an Unopposed Joint Motion requesting that the Board again delay the filing deadlines for supplemental testimony on baffle-former bolt issues so that Intervenor would be able to consider the results of all testing in their testimony.⁴² Reiterating our concern about delaying this proceeding, which questions whether Indian Point can operate safely in the period of extended operation (in which both units are already operating), the Board again granted Intervenor's request.⁴³

³⁹ Id. Entergy suggested that the industry was considering sponsoring the testing of additional bolts, but that the results of those tests would not be available until sometime in 2017. Id. at 3–4.

⁴⁰ Licensing Board Order (Scheduling of Further Filings on Track 2 Contentions) (July 13, 2016) (unpublished). The schedule for further filings initially required the parties to file Proposed Findings of Fact and Conclusions of Law concurrently with some of the supplemental testimony. Id. at 4. Upon joint motion from the parties, the Board altered the deadlines for Proposed Findings of Fact and Conclusions of Law to be filed after all supplemental testimony, providing the parties the ability to consider the supplemental testimony in their Proposed Findings. See Licensing Board Order (Granting Joint Motion for Reconsideration) (Aug. 3, 2016).

⁴¹ Letter from Paul M. Bessette, Counsel for Entergy, to ASLB, Re: Licensing Board Notification Regarding Status of Hot Cell Testing of Indian Point Unit 2 Baffle-Former Bolts, at 1 (Oct. 14, 2016).

⁴² Unopposed Joint Motion To Extend Track 2 Hearing Schedule Deadlines (Oct. 26, 2016).

⁴³ See Licensing Board Order (Granting Unopposed Motion for Extension of Time) (Nov. 2, 2016) (unpublished).

II. MOTION TO DISMISS CONTENTIONS AND TERMINATE THE PROCEEDING

On February 8, 2017, Intervenors filed an unopposed motion stating that they had withdrawn the remaining Track 2 contentions and seeking the dismissal of these contentions without prejudice and the termination of this proceeding.⁴⁴ Accompanying this motion was a Declaration from Lisa Kwong (Kwong Declaration), counsel for New York, which included as attachments copies of several filings made by Entergy to the NRC that served as the predicate for Intervenors' motion.⁴⁵

Specifically, Entergy's filings to the Commission amended its License Renewal Application to provide for a truncated period of extended operations for IP2 and IP3 and augmented aging management programs and other safety measures.⁴⁶ The NRC Staff and Entergy filed separate Answers on February 21, 2017, supporting Intervenors' motion.⁴⁷ Clearwater also stated that they did not oppose Intervenors' motion.⁴⁸ While noticed,⁴⁹ no entity who participated in this proceeding as an interested governmental body responded to this motion.

⁴⁴ Intervenors' Notice of Withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding in Its Entirety (Feb. 8, 2017) [hereinafter Motion to Dismiss].

⁴⁵ See Declaration of Lisa Kwong (Feb. 8, 2017) [hereinafter Kwong Declaration].

⁴⁶ See Motion to Dismiss at 2–3.

⁴⁷ NRC Staff's Answer to Intervenors' Notice of Withdrawal of Track 2 Contentions and Unopposed Motion to Dismiss Those Contentions and This Proceeding In Its Entirety (Feb. 21, 2017) [hereinafter NRC Staff's Answer]; Entergy's Answer in Support of Intervenors' Motion to Dismiss the Pending Track 2 Contentions and Terminate the Proceeding (Feb. 21, 2017) [hereinafter Entergy's Answer].

⁴⁸ Kwong Declaration, attach. 7, Hudson River Sloop Clearwater, Inc. Resolution for Action on Indian Point Settlement Agreement (Feb. 8, 2017).

⁴⁹ Licensing Board Notice (Opportunity to Comment on Motion to Withdraw) (Feb. 15, 2017) (unpublished).

In their motion, Intervenors stated that they are satisfied that the filings made by Entergy to the NRC adequately address the safety concerns raised in their Track 2 contentions.⁵⁰ As discussed in Intervenors' motion,⁵¹ the filings made by Entergy, inter alia, include the following: (1) a Notification of Permanent Cessation of Power Operations for IP2 and IP3 in 2020 and 2021, respectively;⁵² (2) an update to its License Renewal Application that reflects a shortened license renewal term;⁵³ and (3) updates to its Reactor Vessel Internals Aging Management Program and Inspection Plan,⁵⁴ which include "accelerated inspection and replacement of baffle-former bolts at IP2 and IP3 in response to Indian Point and industry operating experience with bolt cracking."⁵⁵ Intervenors noted that these amendments are subject to NRC review and approval.⁵⁶ Entergy also committed to "permit annual plant inspections by New York State personnel," "perform general inspections of the steam generator channel head and tubesheet region during the IP3 2017 and IP2 2018 refueling outages in accordance with newly-issued

⁵⁰ See Motion to Dismiss at 3.

⁵¹ Id. at 2–3.

⁵² Kwong Declaration, attach. 5, NL-17-021, Letter from Anthony J. Vitale, Indian Point Site Vice President, to NRC, Notification of Permanent Cessation of Power Operations (Feb. 8, 2017).

⁵³ Id., attach. 6, NL-17-019, Letter from Anthony J. Vitale, Indian Point Site Vice President, to NRC, Amendment to License Renewal Application – Reflecting Shortened License Renewal Terms for Unit 2 and 3, at 2 (Feb. 8, 2017). While the license terms extend beyond the date of cessation of operations, Intervenors state in their motion that Entergy could only operate Indian Point beyond 2020 and 2021 "in the event that [New York] determines that an emergency exists," but under no circumstances beyond April 2024 for IP2 and April 2025 for IP3. Motion to Dismiss at 2.

⁵⁴ Id., attach. 4, NL-17-020, Letter from Anthony J. Vitale, Indian Point Site Vice President, to NRC, Amendment to License Renewal Application – Revisions to Reactor Vessel Internals Aging Management Program and Inspection Plan (Feb. 6, 2017). These revisions include "the addition of new Section 6.2 to incorporate discussion of the recent Unit 2 [operating experience]" and "changes to Entergy's schedule and plans for conducting future [ultrasonic] and visual inspections as well as replacement of baffle-former bolts at IP2 and IP3." Id. at 2.

⁵⁵ Motion to Dismiss at 2–3.

⁵⁶ Id. at 10, n.33.

NRC guidance,” and “expedite the transfer of fuel assemblies from the spent fuel pools to dry cask storage.”⁵⁷ Based on these commitments, Intervenor’s state that, in their view, “Entergy has significantly improved the prospects for safe future operation of Indian Point” until “Entergy’s early retirement of IP2 . . . and IP3.”⁵⁸ Both the NRC Staff and Entergy agree that Intervenor’s contentions should be dismissed and the proceeding terminated.⁵⁹

III. CONCLUSION

The Board has taken extensive testimony and held an evidentiary hearing on all issues in the Track 2 contentions with the exception of extensive baffle-former bolt degradation, which was addressed in the attachments to the Kwong Declaration. The NRC Staff noted in their Answer that nothing in the amendments filed by Entergy or the representations made by Entergy and Intervenor’s “should be interpreted as altering or otherwise encumbering the full scope of the Commission’s authority over Indian Point.”⁶⁰ The information contained in the attachments to the Kwong Declaration has been submitted by Entergy to the NRC. The NRC Staff and subsequently the Commission now has the responsibility to review this material and ensure that IP2 and IP3 can operate safely through the period of extended operation.

Consistent with the guidance provided by Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 NRC 185 (1991) and 10 C.F.R. § 2.340(a), we do not see any adverse safety consequences of granting Intervenor’s request for dismissal of the remaining contentions, and we see no further role for the Board in this

⁵⁷ Id. at 3.

⁵⁸ Id. at 16.

⁵⁹ See NRC Staff’s Answer at 1–2; Entergy’s Answer at 3–8.

⁶⁰ NRC Staff’s Answer at 2.

proceeding. Accordingly, the Board grants Intervenors' motion, dismisses the three remaining Track 2 contentions without prejudice, and terminates this proceeding.

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 13, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR
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(Indian Point Nuclear Generating,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Motion to Dismiss Contentions and to Terminate This Proceeding)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell ____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of March, 2017