

**RAS 4742**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 08/15/02**

**SERVED 08/15/02**

Before Administrative Judges:

Michael C. Farrar, Chairman  
Dr. Richard F. Cole  
Dr. Charles N. Kelber

In the Matter of

ENTERGY NUCLEAR INDIAN POINT 2, LLC,  
and  
ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Unit No. 2)

Docket No. 50-247-OLA

ASLBP No. 02-798-01-OLA

August 15, 2002

ORDER

(Re Motions for Expedited Rulings)

Acting on the heels of Riverkeeper's August 13 decision to rest on its previous filings rather than to take the proffered opportunity to amend and to supplement its intervention petition, both the NRC Staff and the licensee Entergy moved on August 14 for the expedited termination or dismissal of this proceeding and the concomitant cancellation of the prehearing conference scheduled to be held on Tuesday, August 27. Riverkeeper has, of course, not yet had the opportunity to respond to the pending motions.

Until Riverkeeper does so, the Board is in no position to anticipate the nature of any response that organization might make. We are, however, able to take now the action outlined herein.

We have previously indicated that oral argument at the prehearing conference "would be helpful to the Board" on the issues "related to Riverkeeper's standing and the belatedness of its petition" (July 17, 2002 Memorandum and Order, p. 3). Similarly, not knowing what Riverkeeper's response to the termination/dismissal motions will be, and given the opportunity

to use the already-scheduled and fast-approaching conference to hear argument on those motions -- argument which will benefit the Board in deciding all the matters before it -- we decline the Staff's and Entergy's invitation to cancel the conference by ruling prior to that time on the acceptability of Riverkeeper's contention or on the other issues before us. We believe that our ability to arrive at a sound decision on all those matters -- while using our resources efficiently -- will be enhanced, not retarded, by holding the conference as now scheduled.

Having said that, we note that this week's filings by the three parties have made into a key matter for argument at the conference the question as to whether Riverkeeper's prior filings present a valid contention cognizable under the Commission's Rules of Practice. The Board took some pains to bring those Rules to Riverkeeper's attention when we established an August 12 deadline for it to supplement its intervention petition by filing its contention(s) formally (see July 17 Memorandum and Order, pp. 3, 4-5). In that regard, although we are not ready to accept the Staff's and Entergy's suggestion that Riverkeeper has in effect defaulted by resting on its previous filings, we do note that we had tentatively suggested that those previous filings appeared to fall short of constituting a formal contention (see July 17 Memorandum and Order, p. 3, observing that "Riverkeeper's prior filings provide some indication of the likely nature of its contention(s)"; and p. 5, referring to the "self-expressed limitations contained in the April 29 letter from petitioner's expert, Dr. Christian Meyer").

In these circumstances, we are providing Riverkeeper until 3:00 PM next Thursday, August 22, 2002, to have in the other parties' and our hands a thorough, written response to the August 14 Staff and Entergy motions. That response should address at some length the adequacy of Riverkeeper's prior filings to serve as the contention(s) contemplated by the Commission's Rules, for that issue will be a key focus of the conference. In this regard, we note that Riverkeeper's failure to exercise its opportunity to file any formal contention by the

August 12 deadline, and its announced decision to rest on its prior filings, would appear to preclude it from now timely putting new substantive contention material before us, either in the August 22 written filing or at the conference.

For the foregoing reasons, the Tuesday, August 27 conference will PROCEED AS SCHEDULED, and the pre-conference dismissal/termination relief sought by the Staff and Entergy is DENIED.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

**/RA/**

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Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

**/RA/**

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Richard F. Cole  
ADMINISTRATIVE JUDGE

**/RA/**

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Charles N. Kelber  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 15, 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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ENTERGY NUCLEAR INDIAN POINT 2, LLC ) Docket No. 50-247-OLA  
AND ENTERGY NUCLEAR OPERATIONS, INC. )  
 )  
(Indian Point Nuclear Generating Station, )  
Unit No. 2 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (RE MOTIONS FOR EXPEDITED RULINGS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-247-OLA  
LB ORDER (RE MOTIONS FOR EXPEDITED  
RULINGS)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 15<sup>th</sup> day of August 2002