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USNRC

April 4, 2008 (8:00am)

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ADJUDICATIONS STAFF

April 3, 2008

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

Before Administrative Judges:
Lawrence G. McDade, Chairman
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop

In the Matter of)	
)	
Entergy Nuclear Operations, Inc.)	Docket Nos.
(Indian Point Nuclear Generating)	50-247-LR
Units 2 and 3))	and 50-286-LR
)	

**RIVERKEEPER, INC.'S UNOPPOSED MOTION FOR
MODIFIED BRIEFING SCHEDULE WITH RESPECT TO
AMENDED CONTENTION TC-1**

In the last several days, it has become apparent that Riverkeeper, Inc., and the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff have had differing interpretations of the Atomic Safety and Licensing Board's ("ASLB's") March 18, 2008, Order (Scheduling Briefing Regarding the Effects of License Amendment 2 on Pending Contentions) with respect to the schedule for the NRC Staff's response to Riverkeeper's Request for Admission of Amended Contention TC-1 (March 5, 2008) ("Amended Contention TC-1").¹ As a result of these differing interpretations, it now

¹ While the parties have set aside their disagreement regarding their respective interpretations of the Order, the difference can be summarized as this: the NRC Staff has interpreted the language on page 2 of the Order to give the Staff until April 21, 2008, to submit its answer to Amended Contention TC-1 and any amended contention which may be filed by the State of New York on this subject (*cf.* Tr. 559, 561), while Riverkeeper respectfully submits that the Order confuses the types of supplemental submissions

appears that pursuant to 10 C.F.R. § 2.309(f), Riverkeeper must reply by April 8, 2008, to Entergy's answer to Amended Contention TC-1 (which Entergy filed on March 31, 2008), two weeks before the NRC Staff intends to respond to Amended Contention TC-1.

In an attempt to resolve the scheduling difficulties caused by the parties' conflicting interpretations of the ASLB's Order, Riverkeeper consulted with counsel for Staff as well as counsel for Entergy Nuclear Operations, Inc. ("Entergy"). The three parties have agreed to the following modified schedule that, if adopted in full by the ASLB, addresses all of their concerns:²

(a) Riverkeeper will accept the NRC Staff's interpretation of the ASLB's March 5 Order with respect to the April 21 deadline for the NRC Staff's answer to Amended Contention TC-1;

(b) Although the Order states that "[n]o other pleadings" regarding

requested by the Board from New York State and Riverkeeper. The Order references pgs. 586-587 of the transcript as supporting the statement that the Board allowed Riverkeeper the opportunity to reply to the Staff's change of position on TC-1. However, that portion of the transcript refers to the Board's decision to allow Riverkeeper to reply to the Staff's change of position regarding EC-1, not TC-1. Riverkeeper, and apparently Entergy counsel, were operating under the assumption that there was one schedule for Entergy and the NRC Staff to answer Riverkeeper's Amended TC-1, and another schedule for Riverkeeper to submit additional filings to the Board regarding Contentions EC-1 and EC-2. See tr. 586-87, 630-37. See also Riverkeeper's March 14, 2008 letter to the ASLB. Therefore, Riverkeeper expected the Staff to file its answer to Amended Contention TC-1 by March 31, 2008, as would be required by 10 C.F.R. § 2.309(h)(2), and as the Staff stated it would do in its letter to the ASLB of March 17, 2008 (filed prior to issuance of the Licensing Board's scheduling Order of March 18, 2008).

² Counsel for Entergy has stated that Entergy agrees to this schedule only if the ASLB approves of April 21 as the deadline for the Staff's answer to Amended Contention TC-1. If the ASLB establishes some other date for the Staff's response, then Entergy would insist that Riverkeeper must file its reply to Entergy's opposition to Amended Contention TC-2 by April 8, 2008, or seven days after it was received (after 5 p.m. on March 31, 2008). 10 C.F.R. §§ 2.309(h)(2), 2.306.

Amended Contention TC-1 will be permitted after April 21, Riverkeeper should be allowed to reply to both the NRC Staff's and Entergy's answers to Amended Contention TC-1, as contemplated by 10 C.F.R. § 2.309(h)(2) and the Licensing Board's remarks during oral argument (Tr. 561);

(c) It is appropriate for Riverkeeper to submit a consolidated reply to both Entergy and the NRC Staff; and

(d) While 10 C.F.R. § 2.309(h)(2) ordinarily would allow Riverkeeper only seven days for a reply, it is appropriate to allow Riverkeeper ten days in this instance, because both counsel who are responsible for Contention TC-1 (Ms. Curran and Mr. Musegaas) will be out of town for several days between April 21 and April 28.

(e) It will not be necessary for Riverkeeper to file a pleading on April 7, 2008, that addresses the NRC Staff's change of position regarding Contention TC-1, because that issue can be addressed in Riverkeeper's reply to the NRC Staff's response to Amended Contention TC-1.³

Accordingly, Riverkeeper requests the ASLB to approve a schedule that confirms the NRC Staff may submit its answer to Amended Contention TC-1 by April 21, 2008, and that allows Riverkeeper to reply to both the Staff's and Entergy's answers to Amended Contention TC-1 by May 1, 2008. Counsel for Entergy and Counsel for the Staff have authorized Riverkeeper to state that they do not oppose this motion or the

³ As stated in Riverkeeper's letter to the ASLB of March 14, 2008, however, Riverkeeper intends to address the Staff's change of position on Contention EC-1 in a pleading to be filed on April 7, 2008. In addition, Riverkeeper will address questions raised by the ASLB regarding Contention EC-2.

relief requested herein.

Respectfully submitted,

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April 3, 2008

CERTIFICATE OF SERVICE

I certify that on April 3, 2008, copies of the foregoing motion from Riverkeeper, Inc. to the Atomic Safety and Licensing Board were served on the following by e-mail and first-class mail:

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