

April 16, 2008

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))

UNOPPOSED MOTION OF THE NRC STAFF
FOR LEAVE TO REPLY TO RIVERKEEPER, INC.'S
RESPONSE TO NRC STAFF'S CHANGE IN POSITION
REGARDING THE ADMISSIBILITY OF CONTENTION EC-1

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(a), the Staff of the Nuclear Regulatory Commission ("NRC Staff") hereby requests leave to reply to Riverkeeper, Inc.'s Response to NRC Staff's Change in Position regarding the Admissibility of Contention EC-1, dated April 7, 2008. For the reasons set forth below, the NRC Staff respectfully requests leave to file a reply no later than April 21, 2008.¹

BACKGROUND

At a prehearing conference for the admissibility of contentions relating to the relicensing of Indian Point Nuclear Generating Units 2 and 3, the NRC Staff stated its intention to change its position with respect to the admissibility of New York Contentions 30 and 31,² and

¹ Pursuant to 10 C.F.R. § 2.323(b), the Staff has contacted Counsel for Riverkeeper and Counsel for the Applicant. Riverkeeper and the Applicant authorized the Staff to state that they do not oppose this request.

² Tr. at 467-68.

Riverkeeper Contention EC-1.³ The Board told petitioners New York and Riverkeeper that it would entertain requests for time to file a response to the Staff's change in position.⁴

Following oral argument, New York and Riverkeeper requested to have until April 7, 2008, and March 31, 2008, respectively, to file their responses. The Board granted both requests, and gave both petitioners until April 7, 2008, for the sake of consistency.⁵ That order granted permission for Entergy and NRC Staff to file a reply to New York's response no later than April 21, 2008, but did not grant either party permission to reply to Riverkeeper's response.

On April 9, 2008, after both New York and Riverkeeper had filed responses to the Staff's change of position, the Board issued another order governing the filing of additional pleadings.⁶ In that order, the Board reiterated its authorization for NRC Staff and Entergy to file a reply to New York's response concerning New York Contentions 30 and 31. *Id.* at 3. The order also granted NRC Staff and Entergy leave to file a reply to Riverkeeper's April 7, 2008 response relating to Riverkeeper Contention EC-2. *Id.* The Board did not, however, explicitly grant NRC Staff or Entergy leave to reply to Riverkeeper's response relating to Riverkeeper Contention EC-1.

DISCUSSION

The NRC Staff respectfully requests leave to file a reply to Riverkeeper's April 7, 2008 response to the Staff's change of position on the admissibility of Riverkeeper Contention EC-1. While the responses filed by New York and Riverkeeper are similar in many respects, Riverkeeper's response raises several points not discussed by New York. In addition, the Staff

³ Tr. at 586-87.

⁴ Tr. at 490, 586-87.

⁵ Order (Scheduling Briefing Regarding the Effect of License Amendment 2 on Pending Contentions), March 18, 2008, at 2 ("March 18 Order").

⁶ Order (Granting Riverkeeper, Inc.'s Motion and Amending Briefing Schedule), April 9, 2008 ("April 9 Order").

believes that this request is consistent with the Licensing Board's previous determinations that the parties should be afforded an opportunity to reply to similar responses to the Staff's change in position, such as has been filed by the State of New York. The Staff seeks to respond to the points made by Riverkeeper in its response, and, further, believes that permitting the NRC Staff to reply to Riverkeeper's April 7, 2008 filing would promote consistency and fairness in this proceeding.

CONCLUSION

For the foregoing reasons, the NRC Staff respectfully requests that its motion for leave to reply to Riverkeeper, Inc.'s April 7 Response be granted.

Respectfully submitted,

/RA/

Christopher C. Chandler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of April 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "UNOPPOSED MOTION OF THE NRC STAFF FOR LEAVE TO REPLY TO RIVERKEEPER, INC.'S RESPONSE TO NRC STAFF'S CHANGE IN POSITION REGARDING THE ADMISSIBILITY OF CONTENTION EC-1," dated April 16, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 16th day of April, 2008:

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