

RAS E-223

February 5, 2009 (4:55pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

-----X
In re: Docket Nos. 50-247-LR; 50-286-LR
License Renewal Application Submitted by
Entergy Nuclear Indian Point 2, LLC,
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc.
-----X

ASLBP No. 07-858-03-LR-BD01
DPR-26, DPR-64

February 5, 2009

**JOINT MOTION REQUESTING ESTABLISHMENT OF A DATE CERTAIN
FOR THE FILING OF NEW OR AMENDED CONTENTIONS RELATED TO
THE DRAFT SAFETY EVALUATION REPORT AND AUDIT REPORTS**

Pursuant to 10 CFR §2.323, the State of New York, State of Connecticut, Riverkeeper, Inc., and Hudson River Sloop Clearwater ("Petitioners") file this joint motion to request that the time within which they would be required to file new or amended contentions based on the NRC Staff's Draft Safety Evaluation Report (SER) and Audit Reports be no later than March 18, 2008. As noted in the section on Consultation pursuant to §2.323(b) below, Petitioners bring this motion after engaging in substantial discussions among the parties in an attempt to resolve the issue. Despite the series of discussions, the parties were unable to come to a resolution.

The NRC Staff served its SER and accompanying Audit Reports on the parties on January 15, 2009. *See* Letter from Brian Holian, Director, Division of License Renewal, Office of Nuclear Reactor Regulation, to Joseph E. Pollock, Vice President, Operations, Entergy Nuclear Operations, Inc. (Jan. 15, 2009) (ADAMS Accession No. ML090060045); Letter from Kimberly Green, Safety Projects Manager, Project Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation, to Vice President, Operations, Entergy Nuclear Operations, Inc. (Jan. 13, 2009) (ADAMS Accession Nos.

TEMPLATE=SECY 041

DS03

ML083540648, ML083540662). Although the Board, in its Memorandum and Order Summarizing Pre-Hearing Conference issued February 4, 2009 in this proceeding did not specify a specific time-frame within which new contentions based upon newly available information must be filed, other ASLB Panels have adopted schedules specifying that new contentions filed within 30 days of the issuance of major documents, such as the draft SER, will be deemed timely filed within the meaning of 10 C.F.R. §2.309(c) and need only meet the requirements of 10 C.F.R. § 2.309(f), particularly § 2.309(f)(2). *See, e.g., In the Matter of Entergy Nuclear Vermont Yankee, LLC*, Docket No. 50-271-LR, ASLBP No. 06-849-03-LR, Initial Scheduling Order (Nov. 17, 2006) at 7.

Using that analysis, new contentions based on the SER, if any, would be due no later than February 17, 2009. Petitioners' request for additional time to file new or amended contentions based on the recently issued SER is entirely reasonable, in light of the following. First, the SER is complex and voluminous, reaching almost 900 pages in length. It covers a multitude of issues that require review by the Petitioners' technical experts. In the SER, the NRC Staff has performed analyses and reviews that must be examined to determine what, if any, additional contentions Petitioners believe are warranted. The requested extension will allow a careful review of the SER, which will improve the quality of the contentions that Petitioners may file, and will facilitate the Board's consideration of the admissibility and merits of any new contentions offered. In addition, the Audit Report for Plant Aging Management Programs and Reviews ("Audit Report") includes an extensive list of Entergy documents reviewed by the NRC Staff during the onsite audits. See Audit Report pgs. 92-94. Based on discussions with NRC counsel, Petitioners believe many of these documents were not taken into possession by

the NRC Staff, and thus were not entered into the ADAMS database or are not otherwise publicly available, unless they were included in Entergy's initial discovery disclosures in this proceeding. Determining which relevant documents are included in Entergy's disclosures will take additional time, as will requesting the relevant documents from Entergy and reviewing them thoroughly.

Second, the requested extension will not have a material impact on the schedule for completing these hearings. As a result, it does not appear that harm or prejudice will result to Entergy or the NRC Staff. Although no full schedule has yet been set for the adjudicatory hearing in this proceeding, typically, the adjudicatory hearing is not held until after the final SEIS and final SER are released by the NRC Staff. *See, e.g.*, 10 C.F.R. Part 2, Appendix B, Model Milestones for hearing under Subpart L. According to the NRC's current review schedule for the Indian Point License Renewal Application, the completed SER is not scheduled to be released until July 27, 2009, and the final SEIS is not scheduled to be complete until February 2010. *See* NRC's Indian Point License Renewal Application webpage, at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/indian-point.html>, last accessed February 4, 2009. Extending the time for filing contentions based on the SER will not interfere or cause unreasonable delay with either of those dates.

Third, an unusual confluence of a number of other deadlines and obligations relevant to this proceeding presents significant challenges to Petitioners in meeting the February 17, 2009, deadline. Specifically, the Petitioners are involved in the following related activities:

- (1) Thursday, February 12 -- NRC has scheduled two public meetings on the Draft Supplemental Environmental Impact Statement for Indian Point, ("DSEIS"), which require preparation and attendance by Petitioners.
- (2) Monday, February 16 (the day before new SER contentions are currently due) is a national holiday.
- (3) Wednesday, March 4 -- The NRC's Advisory Committee on Reactor Safeguards ("ACRS") subcommittee meeting on the Indian Point license renewal is scheduled to be held in Rockville, Maryland. Petitioners are preparing to attend this meeting, and expect that NRC Staff and potentially Entergy personnel will also be in attendance.
- (4) Wednesday, March 18 -- Written comments are due on the draft Supplemental EIS for the Indian Point license renewal application.

Consultation with Parties Pursuant to 10 C.F.R. § 2.323(b)

On January 26, counsel for Riverkeeper and New York State first telephoned and spoke with counsel for Entergy to raise the issue and determine whether Entergy would consent to the extension of time. Riverkeeper counsel left a phone message for NRC Staff counsel on January 27, with a request to confer regarding this request. On January 29, Entergy counsel suggested continuing the discussions via a conference call, which took place on Monday, February 2. A further conference call among the parties was held on Tuesday, February 3. Various alternative scheduling proposals were e-mailed among the parties during the first part of this week. Parties discussed among themselves and with their clients, where relevant, the possibility of a three-week extension, along with a three-week extension of time for answers to contentions to be filed. On Tuesday, February 3, counsel for Entergy, Martin O'Neill, contacted parties by electronic mail indicating that "Entergy continues to believe ... that a 2-week extension of time (with a commensurate 2-week extension of time for Entergy to respond to any amended or new contentions) is reasonable under the circumstances." Sherwin Turk, counsel for the NRC

Staff, indicated that Staff does not oppose petitioners' motion as long as Staff is given a commensurate extension of time (specifically, through April 27, 2009) within which to respond. Petitioners would not oppose the Staff's request in this regard.

Petitioners submit that a four-week extension is appropriate, and that a two-week extension will not alleviate the burden on counsel for Petitioners, who are already preparing to meet the above-referenced deadlines. Petitioners respectfully request that the Board establish a filing date of March 18, 2009, for any new or amended contentions based on the draft SER and Audit Reports, and specify that contentions filed by that date will be deemed timely within the meaning of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2)(iii) and no further showing under those provisions will be necessary.

For all the reasons stated and in the interest of justice, Petitioners respectfully request that their joint motion be granted.

Dated: February 5, 2009
Albany, New York

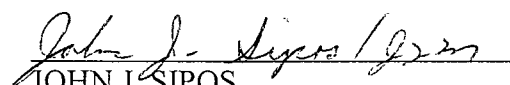
Respectfully submitted,

State of New York

ALEXANDER B. GRANNIS
Commissioner
New York State Department
of Environmental Conservation


JOAN LEARY MATTHEWS
Associate Commissioner
New York State Department
of Environmental Conservation
Office of Hearings & Mediation Services
625 Broadway, 14th Floor
Albany, New York 12233-5500
(518) 402-9190
jlmatthe@gw.dec.state.ny.us

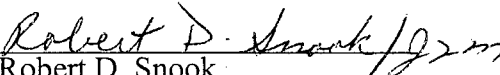
ANDREW M. CUOMO
Attorney General for the State of New York


JOHN J. SIPOS
Assistant Attorney General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 402-2251
john.sipos@oag.state.ny.us

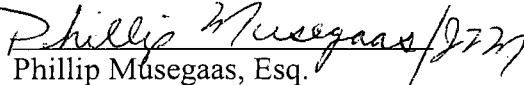
JOHN L. PARKER
Region 3 Attorney
New York State Department
of Environmental Conservation
Region 3 Headquarters
21 South Putt Corners Road
New Paltz, NY 12561-1620
(845) 256-3037
jlparker@gw.dec.state.ny.us

JANICE A. DEAN
Assistant Attorney General
Office of the Attorney General
120 Broadway
New York, NY
(212) 416-8459
janice.dean@oag.state.ny.us


State of Connecticut

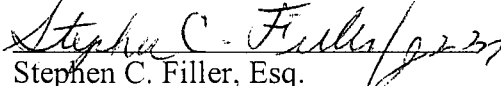

Robert D. Snook
Assistant Attorney General
Federal Bar No. ct10897
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347
Robert.Snook@po.state.ct.us

Riverkeeper, Inc.


Phillip Musegaas, Esq.
Hudson River Program Director
Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591
914-478-4501 (ext. 224)
Phillip@riverkeeper.org

Hudson River Sloop Clearwater, Inc.


Manna Jo Greene, Environmental Director
Hudson River Sloop Clearwater, Inc.
112 Market Street
Poughkeepsie, NY 12601
845-454-7673 (ext. 113)
Mannajo@clearwater.org


Stephen C. Fuller, Esq.
Board Member
Hudson River Sloop Clearwater, Inc.
303 South Broadway
Suite 222
Tarrytown, NY 10591
sfiller@nylawline.com

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ENTERGY NUCLEAR INDIAN POINT 2, LLC,
ENTERGY NUCLEAR INDIAN POINT 3, LLC, and
ENTERGY NUCLEAR OPERATIONS, INC.

Docket Nos.
50-247-LR & 50-286-LR

INDIAN POINT NUCLEAR GENERATING UNITS 2 & 3

ASLBP No.
07-858-03-LR-BD01

Regarding the Renewal of Facility Operating Licenses
No. DPR-26 and No. DPR-64 for an Additional 20-year Period

CERTIFICATE OF SERVICE

I certify that on February 5, 2009, copies of the foregoing Joint Motion Requesting Establishment of a Date Certain for the Filing of New or Amended Contentions Related to the Draft Safety Evaluation Report and Audit Reports were served, on behalf of Petitioners State of New York, State of Connecticut, Riverkeeper, Inc., and Hudson River Sloop Clearwater, Inc. on the following persons by regular first class mail and e-mail:

Lawrence G. McDade, Chair
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mailstop 3 F23
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
Lawrence.McDade@nrc.gov

Richard E. Wardwell
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mailstop 3 F23
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
Richard.Wardwell@nrc.gov

Zachary S. Kahn, Esq.
Law Clerk
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mailstop 3 F23
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
Zachary.Kahn@nrc.gov

Kaye D. Lathrop
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
190 Cedar Lane E.
Ridgway, CO 81432
Kaye.Lathrop@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mailstop 3 F23
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mailstop 16-G4
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
ocaamail@nrc.gov

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
hearingdocket@nrc.gov

Sherwin E. Turk, Esq.
Brian G. Harris
David E. Roth, Esq.
Beth N. Mizuno, Esq.
Marcia J. Simon
Jessica A. Bielecki
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mailstop 15 D21
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
set@nrc.gov
brian.harris@nrc.gov
der@nrc.gov
bnml@nrc.gov
marcia.simon@nrc.gov
jessica.bielecki@nrc.gov

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Mauri T. Lemoncelli, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
ksutton@morganlewis.com
pbessette@morganlewis.com
martin.o'neill@morganlewis.com
mlemoncelli@morganlewis.com

Elise N. Zoli, Esq.
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, MA 02109
ezoli@goodwinprocter.com

William C. Dennis, Esq.
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
wdennis@entergy.com

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
robert.snook@po.state.ct.us

Justin D. Pruyne, Esq.
Office of the Westchester County Attorney
Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, NY 10601
jdp3@westchestergov.com

Daniel Riesel, Esq.
Thomas F. Wood, Esq.
Jessica Steinberg, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
driesel@sprlaw.com
jsteinberg@sprlaw.com

Manna Jo Greene, Director
Hudson River Sloop Clearwater, Inc.
112 Little Market St.
Poughkeepsie, NY 12601
Mannajo@clearwater.org

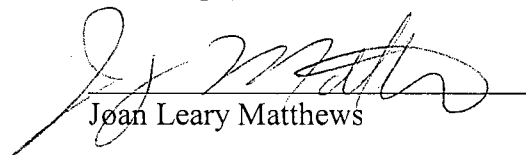
Stephen C. Filler, Esq.
Board Member
Hudson River Sloop Clearwater, Inc.
303 South Broadway
Suite 222
Tarrytown, NY 10591
sfiller@nylawline.com

Diane Curran, Esq.
Harmon, Curran, Speilberg & Eisenberg, LLP
Suite 600
1726 M Street, NW
Washington, DC 20036
dcurran@harmoncurran.com

Phillip Musegaas, Esq.
Victor Tafur, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591
phillip@riverkeeper.org
vtafur@riverkeeper.org
dbrancato@riverkeeper.org

Daniel E. O'Neill, Mayor
James Seirmarcho, M.S.
Village of Buchanan
Municipal Bldg.
236 Tate Avenue
Buchanan, NY 10511-1298
vob@bestweb.net

Michael J. Delaney, Esq.
Vice President - Energy Department
New York City Economic Development Corporation
(NYCEDC)
110 William Street
New York, NY 10038
mdelaney@nycedc.com


Joan Leary Matthews