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OFFICE OF SECRETARY
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos.	50-247-LR and
)		50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)		
)		
(Indian Point Nuclear Generating Units 2 and 3))	April 6, 2009	

ENTERGY'S CONSOLIDATED RESPONSE TO RIVERKEEPER'S FEBRUARY AND MARCH 2009 FILINGS CONCERNING CONSOLIDATED CONTENTION RIVERKEEPER EC-3/CLEARWATER EC-1 AND RIVERKEEPER CONTENTION TC-2

I. INTRODUCTION

Entergy Nuclear Operations, Inc. ("Entergy"), applicant in the captioned proceeding, hereby files this consolidated response to two recent filings made by Riverkeeper, Inc. ("Riverkeeper") regarding two of its admitted contentions.¹ As discussed below, Entergy does not oppose the filings made by Riverkeeper, insofar as they are procedural clarifications, but states for the record that Riverkeeper must comply fully with the applicable requirements in 10 C.F.R. § 2.309 to submit any timely and admissible amended or new contentions based on its ongoing review of documents produced (or to be produced) pursuant to the parties' mandatory disclosure obligations.

II. DISCUSSION

A. Riverkeeper's March 18, 2009, Preservation of Right to Amend Contention TC-2 Regarding Flow-Accelerated Corrosion ("FAC")

In its March 18, 2009, filing, Riverkeeper states that, based on its review of the NRC Staff's Safety Evaluation Report with Open Items and related Audit Report,² "there is no 'new' or

¹ See Riverkeeper, Inc.'s Challenge to NRC Staff's Assessment of Impacts of Spent Fuel Pool Leaks in the Draft Supplemental Environmental Impact Statement (Feb. 27, 2009) ("Riverkeeper DSEIS Challenge"); Riverkeeper, Inc.'s Preservation of Right to Amend Contention TC-2—Flow-Accelerated Corrosion Based Upon NRC Staff's Safety Evaluation Report With Open Items (Mar. 18, 2009) ("Riverkeeper TC-2 Filing").

² See Safety Evaluation Report With Open Items Related to the License Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket Nos. 50-247 and 50-286 (Jan. 2009) ("SER"); Audit Report for Plant Aging Management

'materially different' information warranting an amendment to Riverkeeper's existing contention [TC-2] at this time."³ Riverkeeper requests, however, that the Board "recognize Riverkeeper's right to amend Contention TC-2" once it receives and reviews copies of the documents reviewed by the NRC Staff during its onsite audit, as reflected in the Audit Report.⁴ Riverkeeper notes that, because these documents were not yet available to it, it "is not in a position to assess this apparently more detailed information about Entergy's FAC program as it bears upon Contention TC-2."⁵

In response, Entergy takes no position, now, regarding Riverkeeper's assertion that certain audit-related documents contain "more detailed information" that may warrant amendment of Contention TC-2. Entergy notes, however, that the submittal of amended or new contentions is not an unconditional "right." Specifically, 10 C.F.R. § 2.309(f)(2)(i)-(iii) governs the submission of any amended or new contentions on safety issues related to the NRC Staff's SER. Section 2.309(f)(2) states that "contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer," and that the petitioner must show that: (i) the information upon which the amended or new contention is based was not previously available; (ii) the information upon which the amended or new contention is based is materially different than information previously available; and (iii) the amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.⁶

Accordingly, to submit a *timely* amended or new contention based upon information contained in the audit-related documents, Riverkeeper must demonstrate compliance with the

Programs and Reviews, Indian Point Nuclear Generating Unit Nos. 2 and 3, Docket Nos. 50-247 and 50-286 ("Audit Report").

³ Riverkeeper TC-2 Filing at 3.

⁴ (*Id.* Riverkeeper requested copies of the audit-related documents from Entergy on February 20, 2009. *See id.*, Exh. A. Entergy produced copies of the requested documents to Riverkeeper on April 2, 2009.

⁵ *Id.*

⁶ 10 C.F.R. § 2.309(f)(2)(i)-(iii).

foregoing and other applicable contention admissibility requirements. If Riverkeeper submits such a contention, then Entergy will file a response thereto in accordance with 10 C.F.R. § 2.309(h)(1).

B. Riverkeeper's February 27, 2009, Filing Concerning Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 ("Consolidated Contention")

In a February 27, 2009, filing, in response to the NRC Staff's issuance of its Draft Supplemental Environmental Impact Statement ("DSEIS"),⁷ Riverkeeper requests "that the ASLB recognize that the Consolidated Contention applies against the NRC Staff's analysis in the IP DSEIS as equally as against the applicant's assessment."⁸ Riverkeeper thus "challenges the NRC Staff's assessment of groundwater contamination from spent fuel pool leaks in the IP DSEIS as suffering from the same deficiencies articulated in the Consolidated Contention."⁹

As a procedural matter and as discussed more fully in Entergy's March 24, 2009, Response to New York State's New and Amended Contentions,¹⁰ Entergy does not object to Riverkeeper's request that the Board treat the Consolidated Contention as a challenge to the DSEIS. Furthermore, Entergy does not object to Riverkeeper's position that no formal amendment of the Consolidated Contention is necessary at this time, based on Riverkeeper's representation that "there are no data or conclusions in the NRC Staff's IP DSEIS that 'differ significantly' from Entergy's submissions to date."¹¹ That said, Entergy does not concede the veracity of Riverkeeper's claims regarding the adequacy or merits of the Staff's DSEIS.

⁷ NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 38, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment, Vol. 1, Main Report (Dec. 2008).

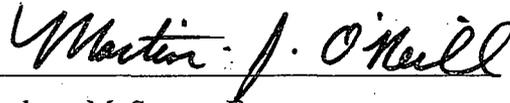
⁸ Riverkeeper DSEIS Challenge at 3.

⁹ *Id.* at 2.

¹⁰ See Answer of Entergy Nuclear Operations, Inc. Opposing New and Amended Environmental Contentions of New York State at 13 & nn.63-64 (Mar. 24, 2009).

¹¹ Riverkeeper DSEIS Challenge at 2-3.

Respectfully submitted,



Kathryn M. Sutton, Esq.

Paul M. Bessette, Esq.

Martin J. O'Neill, Esq.

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Phone: (202) 739-5738

E-mail: ksutton@morganlewis.com

E-mail: pbessette@morganlewis.com

E-mail: martin.o'neill@morganlewis.com

William C. Dennis, Esq.

440 Hamilton Avenue

White Plains, NY 10601

Phone: (914) 272-3202

Fax: (914) 272-3205

E-mail: wdennis@entergy.com

COUNSEL FOR

ENTERGY NUCLEAR OPERATIONS, INC.

Dated in Washington, D.C.
this 6th day of April 2009

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UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Entergy's Consolidated Response to Riverkeeper's February and March 2009 Filings Concerning Consolidated Contention Riverkeeper EC-3/ Clearwater EC-1 and Riverkeeper Contention TC-2," dated April 6, 2009, were served this 6th day of April, 2009 upon the persons listed below, by first class mail and by e-mail as shown below.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
(E-mail: ocaamail@nrc.gov)

Administrative Judge
Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: lgm1@nrc.gov)

Administrative Judge
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: rew@nrc.gov)

Administrative Judge
Kaye D. Lathrop
Atomic Safety and Licensing Board Panel
190 Cedar Lane E.
Ridgway, CO 81432
(E-mail: kdl2@nrc.gov)

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

Zachary S. Kahn, Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: zxk1@nrc.gov)

Sherwin E. Turk, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian G. Harris, Esq.
Andrea Z. Jones, Esq.
Office of the General Counsel
Mail Stop: O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: set@nrc.gov)
(E-mail: bnml@nrc.gov)
(E-mail: david.roth@nrc.gov)
(E-mail: brian.harris@nrc.gov)
(E-mail: andrea.jones@nrc.gov)

Manna Jo Greene
Environmental Director
Hudson River Sloop Clearwater, Inc.
112 Little Market Street
Poughkeepsie, NY 12601
(E-mail: mannajo@clearwater.org)

Stephen C. Filler, Board Member
Hudson River Sloop Clearwater, Inc.
303 South Broadway, Suite 222
Tarrytown, NY 10591
(E-mail: sfiller@nylawline.com)

Phillip Musegaas, Esq.
Victor M. Tafur, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591
(E-mail: phillip@riverkeeper.org)
(E-mail: vtafur@riverkeeper.org)
(E-mail: dbrancato@riverkeeper.org)

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
(E-mail: Robert.Snook@po.state.ct.us)

Justin D. Pruyne, Esq.
Assistant County Attorney, Litigation Bureau
of Counsel to Charlene M. Indelicato, Esq.
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
(E-mail: jdp3@westchestergov.com)

Diane Curran, Esq.
Harmon, Curran, Spielberg, & Eisenberg,
L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
(E-mail: dcurran@harmoncurran.com)

Thomas F. Wood, Esq.
Daniel Riesel, Esq.
Ms. Jessica Steinberg, J.D.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
(E-mail: driesel@sprlaw.com)
(E-mail: jsteinberg@sprlaw.com)

John Louis Parker, Esq.
Regional Attorney
Office of General Counsel, Region 3
NYS Dept. of Environmental Conservation
21 S. Putt Corners Road
New Paltz, New York 12561-1620
(E-mail: jlparker@gw.dec.state.ny.us)

Michael J. Delaney, V.P. – Energy
New York City Economic Development Corp.
110 William Street
New York, NY 10038
(E-mail: mdelaney@nycedc.com)

Andrew M. Cuomo, Esq.
Attorney General of the State of New York
John J. Sipos, Esq.
Charlie Donaldson Esq.
Assistants Attorney General
The Capitol
Albany, NY 12224-0341
(E-mail: john.sipos@oag.state.ny.us)

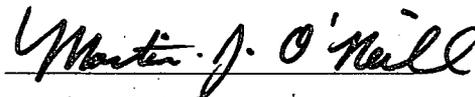
Joan Leary Matthews, Esq.
Senior Attorney for Special Projects
Office of the General Counsel
New York State Department of
Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12207
(E-mail: jlmатhe@gw.dec.state.ny.us)

Janice A. Dean
Office of the Attorney General
of the State of New York
Assistant Attorney General
120 Broadway, 26th Floor
New York, New York 10271
(E-mail: Janice.Dean@oag.state.ny.us)

Daniel E. O'Neill, Mayor
James Siermarco, M.S.
Liaison to Indian Point
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
(E-mail: vob@bestweb.net)

Mylan L. Denerstein, Esq.
Executive Deputy Attorney General,
Social Justice
Office of the Attorney General
of the State of New York
120 Broadway, 25th Floor
New York, New York 10271
(E-mail: Mylan.Denerstein@oag.state.ny.us)

** Original and 2 copies provided to the Office of the Secretary.



Martin J. O'Neill, Esq.
Counsel for Entergy Nuclear Operations, Inc.

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