

RAS E-488

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

DOCKETED

March 10, 2011 (8:30 a.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	Docket Nos.
)	50-247-LR
Entergy Nuclear Operations, Inc.)	and 50-286-LR
(Indian Point Nuclear Generating)	
Units 2 and 3))	March 9, 2011
)	

**HUDSON RIVER SLOOP CLEARWATER, INC. AND
RIVERKEEPER, INC.'S MOTION FOR EXTENSION OF
TIME TO RESPOND TO ENTERGY'S MOTION TO STRIKE**

Pursuant to 10 C.F.R. 2.323(a) and the Atomic Safety and Licensing Board's ("ASLB") Scheduling Order dated July 1, 2010, Hudson River Sloop Clearwater, Inc. ("Clearwater") and Riverkeeper, Inc. ("Riverkeeper") (collectively herein referred to as "Petitioners") respectfully request an extension of time of one week, until March 21, 2011, for the filing of a response to Entergy Nuclear Operations, Inc.'s ("Entergy") Motion to Strike dated March 4, 2011.

REGULATORY BACKGROUND

NRC's Part 2 regulations permit a party to respond to a written motion within 10 days after service of such motion. 10 C.F.R. § 2.323(c). The ASLB's Scheduling Order provides that:

Unless modified by the Board, or otherwise specified in this Order, a motion for extension of time shall be submitted in writing at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. In addition to all other requirements, a motion for extension of time must (i) demonstrate appropriate cause that supports permitting the extension; and (ii) indicate whether the request is opposed or supported by the other participants in the proceeding; and, if opposed, succinctly describe the grounds stated for such opposition.

Scheduling Order ¶ G.4.

TEMPLATE = SECY-041

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APPROPRIATE CAUSE SUPPORTS PETITIONERS' REQUEST

On February 25, 2011, Petitioners filed a Combined Reply to NRC Staff and Entergy's Answers in Opposition to Clearwater and Riverkeeper's Joint Motion for Leave and Petition to Add New Contentions concerning the Waste Confidence Decision ("WCD Reply"). Petitioners concurrently filed a Petition for Exemption from or Waiver of the Restrictions Contained in 10 C.F.R. §51.23(b) ("Waiver Petition"), as well as two affidavits supporting the WCD Reply and Waiver Petition. On Friday March 4, 2011, at around 5:30 p.m., Entergy filed a Motion to Strike portions of the WCD Reply, the Waiver Petition, and the two supporting affidavits. Under 10 C.F.R. § 2.323(c), Petitioners have 10 days, until March 14, 2011, to respond to Entergy's Motion to Strike.

March 14, 2011 is also the deadline by which Riverkeeper must file reply papers in response to "Applicant's Answer to Riverkeeper, Inc.'s Motion For Leave and New Contention Concerning the Consideration of Endangered and Threatened Aquatic Species" and the "NRC Staff's Answer to Riverkeeper Inc.'s Motion for Leave to File a New Contention, and New Contention EC-8 Concerning NRC Staff's Final Supplemental Environmental Impact Statement," both filed this past Monday March 7, 2011. *See* 10 C.F.R. § 2.309(h)(2) ("The reply must be filed within 7 days after service of that answer."); Scheduling Order ¶ F.1 ("Within seven (7) days of service of the answer [to a new/amended contention], the movant may file a reply"). Thus, Riverkeeper is currently focusing its limited resources on preparing these responses within the short one-week timeframe allowed.

Moreover, Clearwater's recent unexpected reorganization of its legal team will limit its ability to devote the time and effort necessary to respond to Entergy's Motion by March 14,

2011.¹ For this reason, Clearwater sought, and was granted an extension of time to reply to Entergy and NRC Staff's answers to Clearwater's amended environmental justice-related contention, for which the original deadline was also March 14, 2011.²

Petitioners further note that a one-week extension of the time for Petitioners to respond to Entergy's Motion to Strike would not materially affect the timeline of the proceeding, since it would ostensibly not affect the "trigger date" for hearing milestones. *See* Scheduling Order ¶ K (stating that "if new or amended contentions are filed that are based on the FEIS, the trigger date will be the day on which the last timely Reply arising from the filing or the new or amended contentions is filed."). Nor would this extension affect Entergy's ability to respond to Petitioners' Waiver Petition, since the ASLB has decided not to set a briefing schedule until the ASLB rules on Entergy's Motion to Strike.³

Entergy opposes Petitioners' request on the grounds that no good cause exists for an extension of time and because Entergy opines that 10 days is sufficient given the multiple representatives for both parties. For the above-discussed reasons, Petitioners disagree that sufficient time and resources exist to respond in a thorough and full manner to Entergy's Motion to Strike. Petitioners underscore that Petitioners did not object when Entergy requested a seven (7) day extension to file its answers to Petitioners' new contentions concerning the FSEIS.⁴ In the interest of fairness, Petitioners respectfully ask the ASLB to grant the instant motion despite Entergy's opposition.

¹ *See* Hudson River Sloop Clearwater, Inc.'s Urgent Request for Extension of Time to Reply to NRC Staff and Entergy's Answer to Amended Environmental Justice Contention (March 4, 2011).

² *See* Indian Point Order (Granting Clearwater's Motion for Extension of Time), March 8, 2011.

³ *See* Indian Point Order (Deadline to Respond to Entergy's Motion to Strike), March 8, 2011.

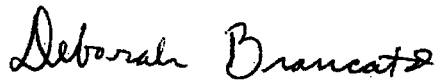
⁴ *See* Indian Point Order (Granting Time Extension), Feb. 25, 2011.

The NRC Staff takes no position regarding Riverkeeper's request. The State of New York does not oppose Petitioners' request. This motion is timely pursuant to the Scheduling Order, ¶ G.4.

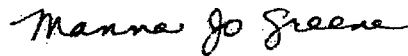
CONCLUSION

Based on the foregoing, Petitioners respectfully submit that appropriate cause exists to justify the proposed extension and request that the ASLB grant Petitioners' motion to extend the filing date for responding to Entergy's Motion to Strike by one week, to March 21, 2011.

Respectfully submitted,



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March 9, 2011

10 C.F.R. § 2.323(b) Certification

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that, while NRC Staff takes no position on the motion and the State of New York does not oppose the motion, Entergy opposes the motion, and, thus, my efforts have been unsuccessful.

Deborah Brancato

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