

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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In re:

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

License Renewal Application Submitted by

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

Entergy Nuclear Indian Point 2, LLC,
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc.

DPR-26, DPR-64

November 15, 2011

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**UNOPPOSED MOTION BY
STATE OF NEW YORK AND RIVERKEEPER
TO AMEND THE SCHEDULING ORDER**

Office of the Attorney General
for the State of New York
The Capitol
State Street
Albany, New York 12224

Riverkeeper, Inc.
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Ossining, New York 10562

The State of New York and Riverkeeper, Inc., jointly file this unopposed motion to amend the filing date for pre-filed submission of Statements of Position, Direct Testimony, and accompanying reports and exhibits from December 1, 2011 to December 22, 2011. Entergy and NRC Staff do not oppose the relief sought in this motion, nor does Clearwater.

This motion is the result of a series of consultations and discussions, commencing on November 9, between and among counsel for the State, Riverkeeper, Entergy, and NRC Staff and continuing over the past several days. After discussing different scenarios, the parties ultimately settled on the proposal presented in this motion.

Entergy and NRC Staff request that Entergy's and the Staff's filing dates be extended by approximately one week, to January 30 (for motions in limine) and February 29 (for testimony, exhibits and statements of position), due to the intervening holidays and the need for vacation and other schedule adjustments by their witnesses and counsel to accommodate the Intervenor's requested filing date. The State, Riverkeeper, and Clearwater do not oppose that request.

The State and Riverkeeper now seek Board approval of the proposed schedule change and request the Board amend the current filing schedule.

APPROPRIATE CAUSE SUPPORTS THE REQUEST FOR EXTENSION

The State and Riverkeeper submit that appropriate cause supports the motion. Entergy requested that the State represent that Entergy does not necessarily concur with the characterization of Entergy's recent disclosures as presented in the Motion.

First, last week, Entergy provided the parties with its monthly discovery disclosure log. November 7, 2011 Entergy Discovery Log, (received via email at 7:00 PM) ("Entergy November 7 Discovery Log"). That log disclosed approximately 113 documents, many of which Entergy indicated related to fatigue (NYS-26/RK-TC-1), embrittlement (NYS-25), and flow

accelerated corrosion (RK-TC-2), among other relevant issues. Of the 113 documents, approximately 11 were created in October 2011. The State and Riverkeeper promptly reviewed the November 7 Discovery Log with Dr. Lahey and Dr. Hopenfeld, and those experts have asked to review many of the documents. In a recent conference call, Entergy committed to delivering the actual documents to the State and Riverkeeper later this week – by Thursday, November 17, 2011. The relevance of these documents to various contentions is discussed below in further detail.

Second, the request is further supported by the following scheduling limitations. Dr. Lahey's ability to review the newly-disclosed information will be limited as he will be unavailable from November 24 to December 1, 2011. Riverkeeper's request for an extension of time is also based on the fact that Riverkeeper staff counsel (Ms. Brancato) will be unavailable due to pre-existing vacation plans from December 12 through December 16, 2011.

Third, the State has recently obtained the assistance of a severe accident expert. The requested extension will provide the State with additional time to prepare its opening presentation on decontamination and clean up costs (NYS-12).

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The State and Riverkeeper provide the following information to further support the request for an extension of time:

NYS-26/RK-TC-1. In this proceeding, Entergy seeks to rely on various computer programs and results thereof to support its application for licenses to operate Indian Point Unit 2 and Unit 3 for an additional 20 years. One of those computer programs is WESTEMS. Entergy and its consultant, Westinghouse, rely on WESTEMS to address environmentally assisted fatigue

concerns (CUF_{en}).¹ The Board has admitted the State and Riverkeeper's contentions concerning metal fatigue and consolidated the parties' contentions (NYS-26/RK-TC-1). Entergy's November 7 Document Log discloses over 35 new documents relating to metal fatigue or WESTEMS. The State and Riverkeeper have reviewed the November 7 Discovery Log with their respective experts. The State's expert, Dr. Richard Lahey, has requested to receive and review the documents. The consolidated contention requires attorney coordination, and Riverkeeper's expert consultant, Dr. Joram Hopenfeld requires the time necessary to review these new documents to determine how it may inform his testimony.

NYS-25. As discussed in previous filings in this proceeding, EPRI has coordinated industry efforts to respond to NRC Staff concerns about embrittlement. A significant portion of EPRI's efforts have been designated as confidential business information. The Board has admitted the State's contention concerning embrittlement (NYS-25). Entergy's November 7 Document Log disclosed the existence of 14 documents, including 5 EPRI proprietary documents, that concern embrittlement.

RK-TC-2. Entergy and its consultants refer to another computer program known as CHECWORKS in connection with flow accelerated corrosion concerns ("FAC"). The Board has admitted Riverkeeper's contention concerning flow accelerated corrosion at the Indian Point facilities (RK-TC-2). Entergy's November 7 Document Log discloses numerous documents related to CHECWORKS and Riverkeeper's corrosion concerns. In particular, Entergy has now disclosed what appear to be two new, more recent CHECWORKS modeling reports, made up of 26 newly logged documents. Riverkeeper respectfully submits that additional time is required to

¹ According to publicly available information, the WESTEMS computer program reviews metal fatigue issues in conjunction with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III Rules for Construction of Nuclear Power Plant Components Division 1 Subsection NB, Class 1 Components, Subarticles NB-3200 and NB-3600 -- as applicable to specific components.

review and analyze new documents disclosed by Entergy related to Riverkeeper Contention TC-2 – Flow Accelerated Corrosion, prior to the submission of an initial statement of position and testimony on that contention. Entergy’s new CHECWORKS reports are squarely relevant, and, in fact, integral to Riverkeeper’s initial filings pertaining to RK-TC-2. Dr. Hopenfeld has informed Riverkeeper that it will take a considerable amount of time to review and analyze the information contained in these reports so as to meaningfully inform Riverkeeper’s testimony and initial statement of position on this contention. Notably, these reports are dated July 8, 2010, and August 8, 2011, and thus, could ostensibly have been disclosed earlier than on Entergy’s Thirty-Third mandatory disclosure update dated November 7, 2011. Riverkeeper should not be prejudiced in its ability to put forward the most complete and informed case possible due to a delay of mandatory (*i.e.*, self-executing) disclosures that was beyond its control.

Timeliness. This motion is timely as it is being filed more than three business days before the current December 1, 2011 deadline for the filing of initial written statements of position and written testimony with supporting affidavits and exhibits on the admitted contentions. *See* July 1, 2010 Scheduling Order, ¶ G.4.

CONCLUSION

For the above reasons, the State and Riverkeeper respectfully request that the Atomic Safety and Licensing Board amend the June 6, 2011 Amended Scheduling Order and extend the time for the Intervenor’s initial submissions until December 22, 2011. The parties were consulted. NRC Staff and Entergy do not oppose the requested extension presented in this motion. Clearwater agrees to this request.

Also, Entergy and NRC Staff request that Entergy’s and the Staff’s filing dates be extended by approximately one week, to January 30 (for motions in limine) and February 29 (for

testimony, exhibits and statements of position). The State, Riverkeeper, and Clearwater do not object to this request.

Respectfully submitted,

Signed (electronically) by

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dated: November 15, 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 my efforts have been successful with respect to NRC Staff, Entergy, and Clearwater.

Signed (electronically) by

John J. Sipos

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

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2011, copies of the State of New York and Riverkeeper's Unopposed Motion to Amend the Scheduling Order were served upon the following persons via the Electronic Information Exchange system at the following addresses:

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Dated at Albany, New York
this 15th day of November 2011