

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	June 28, 2012

**ENTERGY’S ANSWER OPPOSING RIVERKEEPER MOTION TO HOLD
CONTENTION RK-EC-3/CW-EC-1 IN ABEYANCE PENDING
OUTCOME OF SETTLEMENT NEGOTIATIONS**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(c) and the Atomic Safety and Licensing Board (“Board”) June 26, 2012 email, Entergy Nuclear Operations, Inc. (“Entergy”) timely files this answer opposing Riverkeeper’s Motion to Hold Contention RK-EC-3/CW-EC-1 in Abeyance Pending Outcome of Settlement Negotiations, filed June 25, 2012 (“Motion”). As the Motion indicates, over the past several weeks, Riverkeeper, Hudson River Sloop Clearwater (“Clearwater”), Entergy, and the U.S. Nuclear Regulatory Commission (“NRC”) Staff have held preliminary, good faith settlement discussions concerning Contention RK-EC-3/CW-EC-1. Those settlement discussions still are in their early stages. Nonetheless, Riverkeeper now asks the Board to place RK-EC-3/CW-EC-1 in abeyance pending the outcome of further discussions.

As discussed below, it is premature to place RK-EC-3/CW-EC-1 in abeyance based on preliminary settlement discussions that the parties have undertaken voluntarily because, as Entergy and the NRC Staff have maintained since those discussions commenced, an abeyance would delay the forthcoming hearing on this contention.

II. ARGUMENT

As an initial matter, Entergy will continue to work cooperatively and in good faith with Riverkeeper and Clearwater (jointly, “Intervenors”) in an effort to reach a mutually agreeable resolution to RK-EC-3/CW-EC-1. When settlement discussions commenced, however, Entergy conveyed to Intervenors its position that an abeyance would be inappropriate unless and until negotiations are near final, to avoid adversely impacting the current hearing schedule. The parties’ negotiations to date have been productive, but they remain preliminary in nature as the parties have yet to exchange any detailed settlement proposals or associated documentation.

An abeyance at this point likely would delay the RK-EC-3/CW-EC-1 hearing, which is scheduled to occur later this year, approximately five years after Intervenors filed hearing requests.¹ Specifically, Riverkeeper’s proposed abeyance² would delay the last remaining hearing-related filings until essentially the eve of the October 2012 hearing, if not later.³ Such delay would not only interfere with final hearing preparations, it also likely would necessitate delay in the hearing itself. Accordingly, consistent with rulings on other schedule-related requests, the Board should deny the Motion due to the likely adverse hearing schedule impact.⁴

¹ See Notice of Hearing (Application for Licensing Renewal) at 5 (June 8, 2012); Riverkeeper, Inc.’s Request for Hearing and Petition to Intervene in the License Renewal Proceeding for the Indian Point Nuclear Power Plant at 74 (Nov. 30, 2007), *available at* ADAMS Accession No. ML073410093; Hudson River Sloop Clearwater Inc.’s Petition to Intervene and Request for Hearing at 18 (Dec. 10, 2007), *available at* ADAMS Accession No. ML073520042.

² See Motion at 3-4 (proposing to provide the Board with a settlement update on July 25, 2012 and, if negotiations prove unsuccessful, to file rebuttal testimony “as promptly as possible”).

³ See Scheduling Order ¶¶ K.4-6 (July 1, 2010) (unpublished) (requiring that motions in limine, proposed questions for the Board to ask, and motions for cross-examination be filed no later than 30 days after the service of rebuttal testimony); *see also* 10 C.F.R. § 2.323(c) (answers to motions are due with ten days).

⁴ See Order (Granting Motion for an Extension of Time to File Responses to NRC Staff’s Answer to the Board’s June 7, 2012 Order) at 1 (June 26, 2012) (unpublished) (granting extension motion because “the request is reasonable and will not delay the hearing which is currently scheduled to commence on October 15, 2012”).

Finally, Entergy understands that Riverkeeper may have resource constraints. But the Commission has held that resource constraints are not cause for delay.⁵ Moreover, Intervenors have only one near-term rebuttal filing on this contention and the Board has already granted Intervenors a 30-day extension of time—nearly 90 days in total—for that *optional* filing.⁶ After Intervenors make their rebuttal filings, subsequent filings are not due until late August and mid-September 2012. The parties will therefore have ample opportunity to continue settlement discussions and pursue a mutually agreeable resolution of the contention. Thus, Entergy does not believe that denial of the Motion will adversely impact further settlement discussions, which Entergy fully supports and may lead to a mutually beneficial resolution of RK-EC-3/CW-EC-1.

III. CONCLUSION

For the foregoing reasons, the Board should deny Riverkeeper's Motion, without prejudice to any future abeyance request should the parties reach a settlement agreement requiring Board approval.

⁵ See, e.g., *Tenn. Valley Auth.* (Bellefonte Nuclear Plant Units 1 & 2), CLI-10-26, 72 NRC ___, slip op. at 3 (Sept. 29, 2010).

⁶ See Order (Granting Unopposed Extension of Time) at 1-2 (May 16, 2012) (unpublished) (giving intervenors nearly 90 days to prepare rebuttal testimony).

Respectfully submitted,

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Dated in Washington, D.C.
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ANSWER CERTIFICATION

Pursuant to 10 C.F.R. § 2.323(b), Counsel for Entergy certifies that he has made a sincere effort to make himself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been unsuccessful. Counsel further notes that after Entergy and the NRC Staff objected to Riverkeeper's proposal to hold RK-EC-3/CW-EC-1 in abeyance (due to the preliminary nature of the settlement negotiations and the potential for delay in the hearing schedule), Riverkeeper provided no indication that it would proceed with an abeyance motion. As such, the parties did not discuss the answer deadline, as required by the Board's October 7, 2011 Order.

Executed in accord with 10 C.F.R. § 2.304(d)

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CERTIFICATE OF SERVICE

I certify that on June 28, 2012, a copy of the “Entergy’s Answer Opposing Riverkeeper Motion to Hold Contention RK-EC-3/CW-EC-1 in Abeyance Pending Outcome of Settlement Negotiations” was served electronically via the Electronic Information Exchange on the following recipients:

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