

**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))	
	October 12, 2012

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND
DISMISSAL OF CONSOLIDATED CONTENTION RIVERKEEPER EC-3 AND
CLEARWATER EC-1 (SPENT FUEL POOL LEAKS)**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.338(h), Riverkeeper, Inc. (“Riverkeeper”), Hudson River Sloop Clearwater, Inc. (“Clearwater”; collectively, “Intervenors”), and Entergy Nuclear Operations, Inc. (“Entergy”) hereby jointly move the Atomic Safety and Licensing Board (“ASLB”) for approval of the October 12, 2012 Settlement Agreement between the Intervenors and Entergy (Attachment A hereto), and for dismissal of Consolidated Contention RK-EC-3/CW-EC-1. The Intervenors have authorized Entergy to file for all parties.

This motion and the settlement agreement are based on information that Entergy has provided to the Intervenors related to Consolidated Contention RK-EC-3/CW-EC-1 and certain Entergy commitments described further below. The information that Entergy has supplied to the Intervenors as part of its mandatory disclosures includes, but is not limited to, documents concerning the groundwater monitoring at Indian Point Units 2 and 3, including reports and results of quarterly radionuclide monitoring. Entergy has committed to the following as conditions to settlement:

- to publish, on a publicly-available website, commencing in the third quarter of 2013, each new quarterly Indian Point radionuclide groundwater monitoring report within six months of the end of each quarter, and in the event any such report is unavailable within six months of the end of the quarter, to instead publish the final, quality assurance-reviewed groundwater monitoring data for that quarter, and
- to conduct additional downstream fish sampling at a location in Haverstraw Bay, or the vicinity, in accordance with Entergy's Radiological Environmental Monitoring Program commencing in the third quarter of 2013 for Indian Point Units 2 and 3, and report the results of such monitoring in the Indian Point Annual Radiological Environmental Operating Report.

Based on the information Entergy has supplied to Intervenors as part of its mandatory disclosures related to Consolidated Contention RK-EC-3/CW-EC-1, the Intervenor's examination and review of that information, and Entergy's commitments made in support of settlement, Intervenors agree to release their claims regarding the assessment of the environmental significance of the spent fuel pool leaks at Indian Point Units 2 and 3 raised in RK EC-3/CW EC-1. Intervenors therefore withdraw RK EC-3/CW EC-1 in this relicensing proceeding, subject to the ASLB's consent.

Entergy and Clearwater also stipulate that an assessment of the environmental impacts of spent fuel pool leaks to satisfy NEPA is outside the scope of proposed contention Clearwater SC-4, which is currently held in abeyance. By so stipulating, Clearwater and Entergy do not concede or admit anything about the admissibility or merits of Clearwater SC-4.

Pursuant to the requirements of 10 C.F.R. § 2.323(b), the Intervenors and Entergy have made sincere efforts to contact the other parties and resolve the issues addressed in this motion.

Entergy has informed the State of New York about the proposed resolution of this contention (which the State is not a party to), and New York has authorized Entergy to represent that the State does not take any position with respect to the proposed settlement and asserts that this settlement has no impact on any other regulatory matter or proceeding. Entergy has also consulted with the Nuclear Regulatory Commission (“NRC”) Staff, which has authorized Entergy to represent that the NRC Staff does not oppose the settlement.

Respectfully submitted,

Hudson River Sloop Clearwater, Inc.

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

Manna Jo Greene
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508

Authorized Representatives of Clearwater

Dated: October 12, 2012

Riverkeeper, Inc.

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

Philip Musegaas
Deborah Brancato
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562

Attorneys and Authorized
Representatives of Riverkeeper

Dated: October 12, 2012

Entergy Nuclear Operations, Inc.

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

Paul M. Bessette
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Attorney and Authorized
Representative of Entergy

Dated: October 12, 2012

Attachment A

**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))	October 12, 2012
)	

**SETTLEMENT AGREEMENT REGARDING CONSOLIDATED CONTENTION
RIVERKEEPER EC-3/CLEARWATER EC-1**

This Settlement Agreement is entered into on October 12, 2012, by and between Riverkeeper, Inc. (“Riverkeeper”), Hudson River Sloop Clearwater, Inc. (“Clearwater”; collectively, “Intervenors”) and Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. (“Entergy”) in accordance with 10 C.F.R. § 2.338(a) and (h).

WHEREAS, on November 30, and December 10, 2007, Riverkeeper and Clearwater, respectively, petitioned to intervene as parties in this U.S. Nuclear Regulatory Commission (“NRC”) proceeding concerning whether the operating licenses of the Indian Point Unit 2 and Indian Point Unit 3 nuclear power reactors, located in the Village of Buchanan, New York, should be renewed; and

WHEREAS, in their petitions Intervenors raised several contentions, including contentions challenging the adequacy of the analysis of the environmental significance of spent fuel pool leaks at the Indian Point Unit 2 nuclear power reactor for purposes of license renewal

under the National Environmental Policy Act (“NEPA”) and the regulations in 10 C.F.R. Part 51;
and

WHEREAS, by Memorandum and Order dated July 31, 2008 (LBP-08-13), the Atomic Safety and Licensing Board (“ASLB”) admitted the Intervenors as parties to this proceeding, admitted as Contention Riverkeeper EC-3 (“RK EC-3”) Riverkeeper’s contention regarding the environmental impacts of spent fuel pool leaks, admitted as Contention Clearwater EC-1 (“CW EC-1”) Clearwater’s contention raising similar issues, and consolidated those contentions as Consolidated Contention RK EC-3/CW EC-1; and

WHEREAS, by Memorandum and Order dated July 6, 2011 (unpublished) the ASLB recognized that RK EC-3/CW EC-1 challenged the NRC Staff’s analysis of the environmental impacts of spent fuel pool leaks in its Draft and Final Supplemental Environmental Impact Statements for license renewal of Indian Point Unit 2 and Indian Point Unit 3; and

WHEREAS, as part of mandatory disclosures and in an effort to resolve RK EC-3/CW EC-1, Entergy has provided the Intervenors with certain information concerning the groundwater monitoring at Indian Point Unit 2 and Indian Point Unit 3, including reports and results of quarterly radionuclide monitoring; and

WHEREAS, Intervenors have expressed concern regarding the need to consider increased public access to information about spent fuel pool leaks and groundwater contamination at Indian Point; and

WHEREAS, Intervenors have also expressed concerns regarding the need to consider additional environmental monitoring; and

WHEREAS, the Intervenors and Entergy have explored their positions through settlement negotiations and now desire to settle on the terms set forth below.

NOW THEREFORE, in consideration of the premises and mutual promises herein, Intervenor and Entergy agree as follows:

1. Commencing in the third quarter of 2013, Entergy agrees to publish, on a publicly-available website, each new quarterly Indian Point radionuclide groundwater monitoring report within six months of the end of each quarter, and in the event any such report is unavailable within six months of the end of the quarter, to instead publish the final, quality assurance-reviewed groundwater monitoring data for that quarter.

2. Entergy agrees to conduct additional downstream fish sampling at a location in Haverstraw Bay, or the vicinity, in accordance with Entergy's Radiological Environmental Monitoring Program ("REMP") commencing in the third quarter of 2013 for Indian Point Units 2 and 3, and report the results of such monitoring in the Indian Point Annual Radiological Environmental Operating Report.

3. Intervenor agrees to release their claims regarding the assessment of the environmental significance of the spent fuel pool leaks at Indian Point Units 2 and 3 raised in RK EC-3/CW EC-1. Intervenor therefore withdraws RK EC-3/CW EC-1 in this relicensing proceeding, subject to the ASLB's consent.

4. Clearwater and Entergy jointly stipulate with respect to proposed contention Clearwater SC-4 that Clearwater SC-4 is a safety contention raising issues under the Atomic Energy Act that is currently held in abeyance. Assessment of the environmental impacts of spent fuel pool leaks to satisfy NEPA is outside the scope of Clearwater SC-4. By so stipulating, Clearwater and Entergy do not concede or admit anything about the admissibility or merits of Clearwater SC-4.

5. Intervenors and Entergy agree to file a joint motion seeking a Consent Order from the ASLB approving this Settlement Agreement and dismissing Consolidated Contention RK EC-3/CW EC-1 (“Consent Order”).

6. Intervenors and Entergy agree that an order the ASLB enters in accordance with this Settlement Agreement for RK EC-3/CW EC-1 will have the same force and effect as an order entered after full hearing on the pending license renewal application before the Board.

7. With regard to RK EC-3/CW EC-1, in this license renewal proceeding, Intervenors and Entergy expressly waive any and all further procedural steps before the ASLB and any right to challenge or contest the validity of any order the ASLB enters in accordance with this Settlement Agreement for RK EC-3/CW EC-1, and waive all rights to seek judicial review or otherwise to contest the validity of any order entered by the ASLB with regard to RK EC-3/CW EC-1 in this license renewal proceeding so long as such order is fully consistent with each and every provision of this Settlement Agreement.

8. Intervenors and Entergy, the parties to this Settlement Agreement, acknowledge that the NRC and the ASLB have jurisdiction over the parties and over the subject matter of the Settlement Agreement, including jurisdiction to take the actions sought in the Joint Motion for Approval of Settlement Agreement and Dismissal of Consolidated Contention RK EC-3/CW EC-1 (“Joint Motion”) to which this Settlement Agreement is attached.

9. Intervenors and Entergy agree that all matters referred to in this Settlement Agreement and the Joint Motion that were required to be adjudicated in connection with Consolidated Contention RK EC-3/CW EC-1 have been resolved by this Settlement Agreement and the ASLB’s order in accordance with this Settlement Agreement.

10. This Settlement Agreement will become effective upon issuance of the Consent Order requested by the Joint Motion.

[END OF PAGE]

IN WITNESS WHEREOF, Riverkeeper, Clearwater, and Entergy have executed this Settlement Agreement on the dates indicated below.

Riverkeeper, Inc.

By: Executed in Accord with 10 C.F.R. § 2.304(d)

Philip Musegaas
Deborah Brancato
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562

Attorneys and Authorized
Representatives of Riverkeeper

Dated: October 12, 2012

Hudson River Sloop Clearwater, Inc.

By: Executed in Accord with 10 C.F.R. § 2.304(d)

Manna Jo Greene
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508

Authorized Representatives of Clearwater

Dated: October 12, 2012

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

By: Executed in Accord with 10 C.F.R. § 2.304(d)

Paul M. Bessette
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Attorney and Authorized
Representative of Entergy

Dated: October 12, 2012

Attachment B

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Michael F. Kennedy
Dr. Richard E. Wardwell

In the Matter of	Docket Nos. 50-247-LR and 50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	ASLBP No. 07-858-03-LR-BD01
(Indian Point Nuclear Generating Units 2 and 3)	[Date]

CONSENT ORDER

(Approving Settlement of Consolidated Contention Riverkeeper EC-3 and Clearwater EC-1)

In accordance with 10 C.F.R. § 2.338(g), the October 12, 2012 Joint Motion for Approval of Settlement Agreement and Dismissal of Consolidated Contention Riverkeeper EC-3 and Clearwater EC-1 in this relicensing proceeding is granted. The mutual resolution of this Contention and the avoidance of unnecessary litigation is in the public interest. Accordingly, the Settlement Agreement is approved, and Consolidated Contention RK-EC-3/CW-EC-1 is dismissed.

It is SO ORDERED.

**FOR THE ATOMIC SAFETY
AND LICENSING BOARD**

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[Date]

**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))	
)	October 12, 2012

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of the Joint Motion for Approval of Settlement Agreement and Dismissal of Consolidated Contention Riverkeeper EC-3 and Clearwater EC-1 were served on participants in the above-captioned proceeding through the Electronic Information Exchange, the NRC's E-Filing System.

Signed (electronically) by Jonathan M. Rund

Jonathan M. Rund, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5061
Fax: (202) 739-3001
E-mail: jrund@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.