

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

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

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

June 25, 2014

ORDER

(Scheduling Telephonic Conference)

On April 23, 2007, Entergy Nuclear Operations, Inc. (Entergy) timely submitted an application to renew its 10 C.F.R. Part 50 operating licenses for Indian Point Nuclear Generating Units 2 and 3.¹ After the Commission published a notice of opportunity for hearing in the *Federal Register*,² sixteen parties filed requests for hearing and petitions to intervene.³ The following year, on July 31, 2008, the Board issued a memorandum and order that granted the requests for hearing and petitions to intervene of the State of New York (New York), Riverkeeper, Inc. (Riverkeeper), and Hudson River Sloop Clearwater (Clearwater).⁴ In addition

¹ 72 Fed. Reg. 26,850 (May 11, 2007).

² 72 Fed. Reg. 42,134, 42,134 (Aug. 1, 2007).

³ See LBP-13-13, 78 NRC __, __ (slip op. at 4–5) (Nov. 27, 2013) (detailing requests for hearing and petitions to intervene).

⁴ LBP-08-13, 68 NRC 43, 59 (2008). See also Licensing Board Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) (Granting in Part Riverkeeper’s Motion for Clarification and Reconsideration of the Board’s Ruling in LBP-08-13 Related to the Admissibility of Riverkeeper Contention EC-2) (Denying Riverkeeper’s Request to Admit

to the contentions admitted in the July 31, 2008 order, over the next three years, the Board admitted additional contentions based on new information that arose during the course of this proceeding.⁵

In 2012, in an effort to expedite this proceeding, the Board determined that, despite the NRC Staff's ongoing safety and environmental reviews, it was efficient to proceed to the evidentiary hearing on certain contentions on which the NRC Staff had completed its review prior to issuing its additional environmental and safety review documents.⁶ The Board held an evidentiary hearing on "Track 1"⁷ contentions beginning in October 2012.⁸ In November 2013, the Board issued LBP-13-13, resolving all Track 1 contentions.⁹

The evidentiary hearing on the Track 2 contentions was deferred at request of the parties pending the publication of a still forthcoming Safety Evaluation Report (SER) Supplement and the since-released Final Supplemental Environmental Impact Statement Supplement.¹⁰ Regarding the forthcoming SER Supplement, which affects contentions NYS-25 and NYS-38/RK-TC-5, the NRC Staff has not yet provided a specific date for its issuance and

Amended Contention EC-2 and New Contentions EC-4 and EC-5) (Denying Entergy's Motion for Reconsideration of the Board's Decision to Admit Riverkeeper EC-3 and Clearwater Contention EC-1) (Dec. 18, 2008) at 2 (unpublished).

⁵ See, e.g., LBP-10-13, 71 NRC 673, 676 (2010); Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) at 61, 71 (unpublished); Licensing Board Memorandum and Order (Admitting New Contention NYS-38/RK-TC-5) (Nov. 10, 2011) at 2, 12 (unpublished). Appendix A to LBP-13-13 is a list of all admitted contentions. See LBP-13-13, 78 NRC at ___ (slip op. at App. A).

⁶ 77 Fed. Reg. 36,015, 36,016 (June 15, 2012).

⁷ There were nine Track 1 contentions that went to hearing in October, November, and December 2012. As will be explained below, additional contentions (the "Track 2" contentions) cannot be heard until the NRC Staff completes its safety and environmental review.

⁸ 77 Fed. Reg. at 36,016.

⁹ See LBP-13-13, 78 NRC ___.

¹⁰ See NRC Staff's 16th Status Report in Response to the Atomic Safety and Licensing Board's Order of February 16, 2012 (June 3, 2013) at 3.

states that it “expects” to issue the SER Supplement in “mid-2014.”¹¹ Additionally, the NRC Staff has not yet “decided,” “determined,” or “reviewed” several additional issues related to Track 2 contentions.¹²

The NRC Staff’s review of Entergy’s license renewal application began more than seven years ago and continues to linger. Although Entergy’s operating license for Unit 2 expired on September 28, 2013, Entergy continues to operate in the period of extended operation despite unresolved issues of fact.¹³ Accordingly, it is the concern of the Board that given the lengthy delay, the Intervenor’s are being denied a meaningful right to a hearing. In an effort to expedite this proceeding, the Board will conduct a status conference via telephone during the week of July 7 or July 14, 2014, regarding scheduling issues related to Track 2 contentions.¹⁴ During the teleconference, we will:

- (1) seek confirmation of the target date for the publication of Supplement 2 to the SER and inquire how a target publication date is to be determined;
- (2) seek information regarding the status of consultations between the NRC Staff and the New York State Department of State regarding Coastal Zone Management Act (CZMA) issues;
- (3) seek information regarding the status of the NRC Staff’s review of information regarding aquatic impacts of plant operation;

¹¹ NRC Staff’s 28th Status Report in Response to the Atomic Safety and Licensing Board’s Order of February 16, 2012 (June 2, 2014) at 2.

¹² See id. at 5, 7.

¹³ See 72 Fed. Reg. 26,850 (May 11, 2007). If granted renewed licenses, Entergy would be permitted to operate Unit 2 and Unit 3 for an additional twenty-year period beyond the period specified in the current operating licenses, which expired on September 28, 2013, for Unit 2, and will expire on December 12, 2015, for Unit 3.

¹⁴ Currently, Track 2 of the Indian Point evidentiary hearing includes Contentions NYS-25, NYS-26/RK-TC-1B, and NYS-38/RK-TC-5.

(4) solicit the views of the participants regarding the CZMA issues and the impact on relicensing if the NRC Staff does not issue a CZMA-related supplement to the Final Environmental Impact Statement;

(5) seek information regarding the status of all non-NRC state, local, and federal litigation related to Indian Point that may have an effect on the continual operation of the plant;

(6) solicit the views of the participants regarding the ability of Entergy to continue to operate under the existing licenses if the Commission upholds the Board's rulings currently on appeal;

(7) solicit the views of the participants regarding any procedures or scheduling modifications that will promote the fair and expeditious resolution of Track 2 contentions, including scheduling NYS-25 and Track 2 contentions related to Supplement 2 to the SER separately from any remaining issues;

(8) solicit the views of the participants regarding whether it is practical for the Board to set a deadline for the publication of additional review documents that would be considered within this pending proceeding, and to set a date for a hearing and resolution of the Track 2 contentions based on the existing license application and NRC Staff reviews.

No later than Monday, June 30 at 5:00 p.m., the Board requests that each party contact Kathleen Schroeder, the Board's Judicial Law Clerk, at Kathleen.Schroeder@nrc.gov, with times that it is not available for a teleconference on these issues during the weeks of July 7 and July 14, 2014. If a party indicates that it is not available at a particular date and time, that party must provide an explanation as to why it is not available. Prior to the scheduling conference, the Board will issue an order providing the telephone number and passcode to join the teleconference.

Lastly, the Board requests that each participant notify the Board by Thursday, July 3 at 5:00 p.m., with any additional issues that should be addressed during the upcoming status conference.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 25, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR
) and 50-286-LR
(Indian Point Nuclear Generating,)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Telephonic Conference)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell]
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Dated at Rockville, Maryland
this 25th day of June, 2014