

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

ENERGY 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

August 3, 2016

ORDER

(Granting Joint Motion for Reconsideration)

On July 13, 2016, the Board issued an order scheduling the remaining filings on the three Track 2 contentions in this proceeding.¹ The Board issued this order in response to a joint motion from the State of New York (New York), Riverkeeper, Inc. (Riverkeeper), Entergy, and the NRC Staff (collectively, the Parties), who requested that the Track 2 contentions be delayed to provide time for the Parties to evaluate new information and to consider whether additional testimony related to the degradation detected in Indian Point Unit 2 baffle-former bolts during inspection will be necessary.² The Parties then filed a Joint Motion for Reconsideration of the Board's Scheduling Order, requesting that the Board reconsider both its requirement for the Parties to file certain technical documents generated from testing of the degraded baffle-former

¹ Licensing Board Order (Scheduling of Further Filings on Track 2 Contentions) (July 13, 2016) (unpublished) [hereinafter Scheduling Order].

² Joint Motion for Track 2 Hearing Schedule Deferral (Mar. 30, 2016) at 5 [hereinafter Joint Motion for Schedule Deferral].

bolts prior to their filing of supplemental testimony, and also the deadlines for the Parties' individual filings of proposed findings of fact and conclusions of law.³

While the Board reluctantly acquiesces to the Parties' request to rescind the requirement that certain technical documents be filed as soon as practicable, we emphasize that the delay requested by the Parties in their Joint Motion for Schedule Deferral must be warranted by the circumstances. At the core of New York and Riverkeeper's challenges to the Indian Point license renewal is the allegation that Entergy has not demonstrated that Indian Point can safely operate throughout the period of extended operation.⁴ Both Indian Point Units 2 and 3 have already entered that period of extended operation.⁵

The Board finds this situation extremely troubling. The Parties have requested a significant delay in order to gather information about a safety-related issue that will be documented in the technical documents requested in the Board's Scheduling Order. It is that information that could provide the Board with justification for continuing to permit this delay or demonstrate that the Board can resolve these proceedings based on the existing record.

The Parties have requested that the Board not view those documents, unless and until they are filed as exhibits accompanying supplemental testimony, filings which will take place after much of this delay has already passed. Accordingly, in granting the Parties' request, we

³ Joint Motion for Reconsideration or, in the Alternative, Clarification of the July 13, 2016 Licensing Board Order Scheduling Further Filings on the Track 2 Contentions (July 25, 2016) [hereinafter Joint Motion for Reconsideration].

⁴ See, e.g., State of New York Revised Statement of Position Contention NYS-25 (June 9, 2015) at 2; State of New York and Riverkeeper, Inc. Revised Statement of Position Consolidated Contention NYS-26B/RK-TC-1B (June 9, 2015) at 2.

⁵ Entergy Nuclear Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3; Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period, 72 Fed. Reg. 26,850, 26,850 (May 11, 2007). The current operating licenses expired on September 28, 2013, for Unit 2, and December 12, 2015, for Unit 3. Id.

place the onus of that justification on the Parties in that they have agreed to make available to each other certain key technical documents as soon as practicable.⁶ Should any Party question the justification for continued delay of the Track 2 proceedings based on what it sees in those documents, it shall inform the Board of its view immediately, and may, without further motion, submit those documents to the Board in camera for use by the Board in deciding whether to alter the briefing schedule.⁷

The Parties also proposed adding an additional 90 days to the timeline established by the Board in its Scheduling Order, in order to permit the Parties to file proposed and reply findings of fact and conclusions of law after all supplemental and reply testimony on baffle-former bolts has been received.⁸ Despite the fact that the evidentiary hearing on the Track 2 contentions was held in November of 2015, and the fact that this request will further delay filings that must be made before the Board can issue its decision until June of 2017 (at the earliest), the Board grants this joint request. Our goal in establishing the schedule in our July 13 Order was to streamline this already substantially delayed proceeding, but we also recognize that, as pointed out by the Parties in their Joint Motion for Reconsideration, there are “other actions” beyond the issuance of the Track 2 decision “that must be completed before the agency can issue a final decision on license renewal,” which will extend this proceeding even longer than

⁶ Joint Motion for Reconsideration at 2.

⁷ If submitted for this purpose, these documents will only be used by the Board in determining whether further delay of our resolution of these proceedings is warranted. They will not be used in our merits determination unless they are offered as exhibits by a Party and admitted by the Board or, after notice to the Parties, the Board admits them into the record as Board exhibits.

⁸ Id. at 8–9.

this 90-day delay as, almost a decade into this proceeding, the NRC Staff has not yet completed its environmental review.⁹

The Joint Motion for Reconsideration is granted. The Parties may file the technical documents specified in our Scheduling Order as exhibits where they deem appropriate to accompany their supplemental testimony, which shall be filed on the current schedule set in the Board's Scheduling Order.¹⁰ Proposed findings of fact and conclusions of law shall be filed by all Parties by 5:00 PM EDT on April 17, 2017. Reply findings of fact and conclusions law shall be filed by all Parties by 5:00 PM EDT on June 1, 2017.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 3, 2016

⁹ Id. at 9–10. These other actions include the issuance by the NRC Staff of a second Final FSEIS Supplement and a possible third Supplement. Id.

¹⁰ Scheduling Order at 4.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Joint Motion for Reconsideration)** have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 50-247-LR and 50-286-LR
ORDER (Granting Joint Motion for Reconsideration)

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Docket Nos. 50-247-LR and 50-286-LR
ORDER (Granting Joint Motion for Reconsideration)

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[Original signed by Brian Newell _____]
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Dated at Rockville, Maryland
this 3rd day of August, 2016