

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY  
AND LICENSING BOARD**

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

October 26, 2016

**UNOPPOSED JOINT MOTION TO EXTEND TRACK 2  
HEARING SCHEDULE DEADLINES**

In accordance with 10 C.F.R. § 2.323(a), Riverkeeper, Inc. (“Riverkeeper”), and the State of New York (“New York”), jointly request that the Atomic Safety and Licensing Board (“Board”) extend by 60 days the deadlines for the Parties’ submission of supplemental and reply testimony ordered by the Board and the corresponding deadlines for the Parties’ filing of their proposed and reply findings of fact and conclusions of law on the pending Track 2 contentions.<sup>1</sup> Riverkeeper has consulted with Entergy Nuclear Operations, Inc. (“Entergy”), and the Nuclear Regulatory Commission (“NRC”) Staff, who do not oppose this motion. Riverkeeper has also consulted with New York, which has agreed to join in this motion for the reasons set forth herein.

As explained below, the requested extension of the deadlines is warranted in light of Entergy’s notification of October 14, 2016, that the results of its “hot cell” testing of Indian Point Unit 2 (“IP-2”) baffle-former bolts will not be available until late-November (after the November

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<sup>1</sup> The three Track 2 contentions include: (1) NYS-25 (aging management of reactor pressure vessels and internals); (2) NYS-26B/RK-TC-1B (aging management of components subject to environmentally-assisted metal fatigue); and (3) NYS-38/RK-TC-5 (adequacy of certain license renewal safety commitments).

17, 2016 deadline for Riverkeeper and New York to submit their supplemental testimony).<sup>2</sup>

Riverkeeper and New York believe that an extension of the schedule will enable their experts to review and develop their opinions with respect to Entergy's hot cell test results, and will assist the parties in the efficient and orderly development of the record. In support of this Unopposed Joint Motion, Riverkeeper and New York state as follows:

1. On June 28, 2016, the parties filed their Third Joint Status Report Regarding Proposed Track 2 Schedule, in which Entergy informed the Board of its plans to: (1) send approximately 32 of the baffle-former bolts removed from IP-2 following the March 2016 outage inspections to an offsite "hot lab" facility for testing and examination to verify the bolt cracking mechanism; and to (2) sponsor the testing and examination of three of those bolts. Counsel for Entergy stated that the results of the Entergy-funded analyses were expected to be available in October 2016.

2. By Order dated July 13, 2016, the Board established the post-hearing schedule for the submittal of the parties' supplemental and reply testimony as well as the deadlines for filing proposed and reply findings of fact and conclusions of law on the pending Track 2 contentions:

[A]bsent further order from the Board, New York and Riverkeeper, Inc.'s (Riverkeeper) proposed findings of fact and conclusions of law on the Track 2 contentions, supplemental testimony on baffle former bolt issues, and New York's reply testimony related to its February 5, 2016 motion for the admission of six exhibits, shall be filed no later than 5:00 PM EST on November 17, 2016. Entergy and the NRC Staff's proposed findings of fact and conclusions of law on the Track 2 contentions and supplemental testimony shall be filed no later than 5:00 PM EST on January 19, 2017. New York and Riverkeeper's reply testimony and any amendments to their proposed findings of fact and conclusions of law shall be filed no later than 5:00 PM EST on March 2, 2017.<sup>3</sup>

3. In its July 13 Scheduling Order, the Board also stated its expectation that the

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<sup>2</sup> See Letter from Paul Bessette, Morgan Lewis, to Administrative Judges, "Licensing Board Notification Regarding Status of Hot Cell Testing of Indian Point Unit 2 Baffle-Former Bolts" (Oct. 14, 2016).

<sup>3</sup> See Licensing Board Order (Scheduling of Further Filings on Track 2 Contentions) (July 13, 2016) (unpublished).

parties' supplemental testimony "will be supported by technical documents," and that in reaching its decision on the contested issues, the Board "will have the opportunity to review at a minimum the root cause evaluation performed by Entergy, the IP2 repair plan, the NRC August 15, 2016 Inspection Report, *the results of the hot lab testing and evaluation of IP2 baffle-former bolts (expected in October 2016)*, and any key supporting documents for these analyses and reports" (emphasis added).<sup>4</sup>

4. On July 25, 2016, the Parties submitted a Joint Motion for Reconsideration of the Board's July 13 Scheduling Order, requesting that the Board reconsider its requirement for the parties to file certain technical documents with the Board prior to their filing of supplemental testimony. The Joint Motion also sought to amend the deadlines established by the Board for the Parties' filings of their proposed findings of fact and conclusions of law.<sup>5</sup>

5. On August 3, 2016, the Board issued an order granting the parties' Joint Motion for Reconsideration and modified the deadlines as follows: "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."<sup>6</sup>

6. Additionally, in its August 3 Order, the Board "acquiesced" to the Parties' request to rescind the requirement for filing of the key technical documents with the Board prior to the Parties' filing of their supplemental expert testimony, but expressed its concern that it would not view those documents until they are filed as exhibits accompanying supplemental testimony.<sup>7</sup>

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<sup>4</sup> July 13, 2016, Order at 3-4 (emphasis added).

<sup>5</sup> 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).

<sup>6</sup> Licensing Board Order (Granting Joint Motion for Reconsideration) (August 3, 2016) at 4.

<sup>7</sup> Licensing Board Order (Granting Joint Motion for Reconsideration) (August 3, 2016) at 2.

Presumably, the Board had not changed the scope of what it considered to be “key technical documents”, which, as it previously stated, includes the results of the hot lab testing and evaluation of IP2 baffle-former bolts.

7. On October 14, 2016, Entergy informed the Board that it disclosed to the other parties “preliminary, interim testing results” for the three baffle-former bolts for which Entergy sponsored testing, and provided electronic copies of these preliminary results and other related documents to Riverkeeper and New York that evening. In its letter to the Board, Entergy further stated that “[d]ue to the expansion of the testing sample [to add five more bolts], a consolidated report documenting the hot cell analyses of all eight bolts is not expected until late-November 2016.”<sup>8</sup>

8. On October 21, 2016, and October 24, 2016, counsel for Riverkeeper consulted with counsel for Entergy and NRC Staff, respectively, and also consulted with New York several times during that same week. During these consultations, Riverkeeper expressed its view that the timing and preliminary nature of the hot cell testing results would require Riverkeeper’s and New York’s experts to prepare and submit their supplemental testimony without the benefit of the final hot cell testing results in the “consolidated report” now expected by Entergy in late-November. Riverkeeper also stated its view that extending the deadline for filing of supplemental testimony by 60 days would result in a more efficient and cost-effective use of Riverkeeper’s and New York’s limited expert resources by avoiding an additional round of supplemental or revised testimony following Entergy’s release of the consolidated hot cell test report in late-November.

9. Entergy and NRC Staff do not oppose this request by Riverkeeper and New York for

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<sup>8</sup> Letter from Paul Bessette, Morgan Lewis, to Administrative Judges, “Licensing Board Notification Regarding Status of Hot Cell Testing of Indian Point Unit 2 Baffle-Former Bolts” (Oct. 14, 2016).

an extension of the Track 2 hearing schedule deadlines by 60 days. In reaching their respective decisions not to oppose, Entergy and NRC Staff state that their positions should not be considered to be admissions by either Entergy or NRC Staff that the baffle-former bolt testing results are relevant to the Track 2 contentions.

10. In the view of Riverkeeper and New York, the hot cell testing results of the baffle-former bolts at IP-2 are both relevant and material to the resolution of all three of the contentions in this proceeding, NYS-26B/RK-TC-1B, NYS-38/RK-TC-5, and NYS-25.

11. Riverkeeper and New York recognize the already-extended duration of this contested adjudication. Under the circumstances, however, they believe that the requested modification of the scheduling order to extend deadlines by 60 days is appropriate, supported by good cause, and in the best interests of the Parties, the Board, and the public. In this regard, they respectfully assert that the requested deferral will facilitate the Parties' and Board's prudent expenditure of legal and adjudicatory resources, and will ensure that the Board's decision resolving the Parties' Track 2 contentions addresses all relevant issues and evidence.

12. Under 10 C.F.R. § 2.319, this Board has significant discretion with respect to the procedural aspects and conduct of this adjudicatory proceeding.<sup>9</sup> The Parties respectfully request that the Board exercise that discretion in view of the specific circumstances and considerations discussed herein, and grant the requested extension of the Track 2 hearing schedule deadlines. As the Board previously recognized in its August 3, 2016 order, "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," including the issuance by the NRC Staff of a second Final FSEIS

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<sup>9</sup> See 10 C.F.R. §§ 2.319, 2.321(c); *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-10, 80 NRC 157, 164 n.38 (Dec. 16, 2014) (citing *Entergy Nuclear Operations, Inc.* (Indian Point Units 2 and 3), CLI-07-28, 66 NRC 275, 275 (2007)) ("[W]e give broad discretion to our licensing boards in the conduct of NRC adjudicatory proceedings, and we generally defer to board case-management decisions.").

Supplement and a possible third Supplement.<sup>10</sup> Therefore, a 60-day extension will not ultimately affect when the relicensing decision is made.

13. Counsel for Riverkeeper and New York have reviewed this Joint Motion, have consented to it, and have authorized the undersigned to submit it as a Joint Motion on their behalf. Counsel for Entergy and NRC Staff have also reviewed this Unopposed Joint Motion and do not oppose it.

WHEREFORE, Riverkeeper and New York respectfully request that the Board extend by 60 days all of the deadlines for submission of supplemental and reply testimony and post-hearing findings on the three pending Track 2 contentions such that the revised schedule would be as follows:

| <b>EVENT</b>  | <b>CURRENT SCHEDULE</b> | <b>PROPOSED SCHEDULE</b> |
|---|-------------------------|--------------------------|
| New York to file its reply testimony concerning six documents   | 11/17/2016              | 01/16/2017               |
| New York and Riverkeeper to file any supplemental testimony and exhibits to update or revise previously-filed testimony and exhibits on pending Track 2 contentions | 11/17/2016              | 01/16/2017               |
| Entergy and NRC Staff to file any supplemental testimony and exhibits to update or revise previously-filed testimony and exhibits on pending Track 2 contentions    | 01/19/2017              | 03/20/2017               |
| New York and Riverkeeper to file any reply testimony and exhibits on pending Track 2 contentions  | 03/02/2017              | 05/01/2017               |
| All parties to file proposed findings of fact and conclusions of law on Track 2 issues  | 04/17/2017              | 06/16/2017               |
| All parties to file reply proposed findings of fact and conclusions of law on Track 2 issues  | 06/01/2017              | 07/31/2017               |

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<sup>10</sup> Licensing Board Order (Granting Joint Motion for Reconsideration) (August 3, 2016) at 3-4.

Respectfully submitted,

[Electronically signed by]

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*Counsel for Riverkeeper, Inc.*

Dated at Ossining, NY  
this 26th day of October  
2016

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**CERTIFICATE PURSUANT TO 10 C.F.R. § 2.323(b)**

Pursuant to 10 C.F.R. § 2.323(b), counsel for Riverkeeper certifies that she 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 she certifies that her efforts have been successful.

*[Electronically signed by]*

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of “Unopposed Joint Motion to Extend Track 2 Hearing Schedule Deadlines” were served upon the Electronic Information Exchange (the NRC’s E-Filing System) in the above-captioned proceeding.

[Electronically signed by]

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