

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of	)	Docket Nos.
	)	50-247-LR
Entergy Nuclear Operations, Inc.	)	and 50-286-LR
(Indian Point Nuclear Generating	)	
Units 2 and 3)	)	February 9, 2012
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**RIVERKEEPER, INC.’S RESPONSE TO ATOMIC SAFETY  
AND LICENSING BOARD REQUEST FOR INFORMATION**

Riverkeeper, Inc. (“Riverkeeper”) hereby responds to the Atomic Safety and Licensing Board’s (“ASLB”) request for information issued via an order to the parties dated February 3, 2012.<sup>1</sup> Riverkeeper hereby advises the ASLB to the following issues or potential issues that, to Riverkeeper’s current knowledge may have “the potential to further delay this proceeding”<sup>2</sup>:

- As both NRC Staff and Entergy have also acknowledged, on February 6, 2012, the National Marine Fisheries Service (“NMFS”) of the National Oceanic and Atmospheric Administration (“NOAA”) finalized the listing of Atlantic sturgeon in the New York Bight Distinct Population Segment as endangered under the Endangered Species Act.<sup>3</sup> It is Riverkeeper’s understanding, and NRC Staff has conceded, that this development will necessitate formal consultation pursuant to Section 7 of the Endangered Species Act.<sup>4</sup>

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<sup>1</sup> 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, Order (Requesting Information from the NRC Staff and All Participants), February 3, 2012).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> National Oceanic and Atmospheric Administration, National Marine Fisheries Service, RIN 0648-XJ00, Docket No. 100903414-1762-02, Endangered and Threatened Wildlife and Plants; Threatened and Endangered Status for Distinct Population Segments of Atlantic Sturgeon in the Northeast Region, 77 Fed. Reg. 5,880 (Feb. 6, 2012).

<sup>4</sup> See Endangered Species Act of 1973 § 7(a)(3), 16 U.S.C. § 1536(a)(3) (“a Federal agency shall consult with the Secretary on any prospective agency action . . . if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.”); 50 C.F.R. § 402.14(a) (“Each Federal agency shall review its actions at the earliest

Depending on how the parties to the proceeding move forward in light of NMFS' final rule, this development may result in Riverkeeper filing new contentions, which would cause a potential delay in the resolution of the proceedings. Furthermore, this new development also will likely have an effect upon the resolution of Riverkeeper's existing contention related to endangered species, RK-EC-8, and may result in the filing of an amended contention. Though RK-EC-8 is currently being held in abeyance pending NRC Staff's issuance of a supplement to the environmental impact statement related to the license renewal of Indian Point,<sup>5</sup> it remains unclear how long it will take to complete necessary consultation procedures; accordingly, NMFS' new listing has the potential to delay the adjudication of RK-EC-8, and/or the proceedings in general. Finally, this new development also has implications for the adjudication of Riverkeeper and Clearwater's consolidated contention RK-EC-3/CW-EC-1, related to radiological leaks. As such, additional time may be necessary to appropriately account for the new information related to Atlantic sturgeon in revised hearing submissions.

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possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required. . . ."); Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, at 4-57 to 4-59 ("Atlantic sturgeon (*A. oxyrinchus*) also occurs in the [Hudson] river. . . . Recent work by Sweka et al. (2007) suggests that a substantial population of juvenile Atlantic sturgeon is present in Haverstraw Bay. . . . Corrected impingement data. . . shows that both species of sturgeon have been impinged at IP2 and IP3, with impingement of Atlantic sturgeon accounting for the largest losses. . . . Impingement of Atlantic sturgeon was much greater than that observed for shortnose sturgeon").

See also 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, NRC Staff's Statement in Response to the Atomic Safety and Licensing Board's Order of February 3, 2012 (February 8, 2012) at 2-3 ("The Staff expects to communicate with NMFS and to reinitiate consultations regarding this development under Section 7 of the ESA").

<sup>5</sup> 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, Order (December 14, 2011), at 2 ("the initial evidentiary submissions of Riverkeeper relating to Contention RK-EC-8 are also held in abeyance pending further order of this Board in light of the Staff's announcement that a draft supplement to its Final Supplemental Environmental Impact Statement that addresses issues raised in this contention is expected to be issued in draft form in May 2012").

- Riverkeeper's expert Mr. Arnold Gundersen will be unavailable due to prior business commitments during certain weeks in March and April. In addition, Mr. Gundersen will be on business out of the country for upwards of a month sometime in May and/or June of this year. The details of this trip have yet to be finalized, and so a precise timeframe for Mr. Gundersen's unavailability is not yet known. Mr. Gundersen's prospective unavailability may limit Riverkeeper's ability to file revised testimony depending on the deadline for such submissions.
- Due to Riverkeeper's limited resources, and depending on the volume and content of Entergy and NRC Staff's submissions of initial statements of position, testimony, and exhibits, Riverkeeper may request more than the currently allotted 60 days to file revised statements of position, testimony, and exhibits.
- Riverkeeper further notes that it is an active participant in ongoing state proceedings associated with the operation of Indian Point, including the Clean Water Act § 401 Water Quality Certification proceeding pending before the New York State Department of Environmental Conservation, which stems directly from the Indian Point license renewal proceeding. The parties to this state proceeding are currently engaged in hearing and briefing activities, which will continue into the foreseeable future.

To the extent any additional matters become known, which to Riverkeeper's knowledge may have the potential to result in a delay of the proceedings, Riverkeeper will advise the ASLB accordingly.

Respectfully submitted,

***Signed electronically (by Deborah Brancato)***

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**CERTIFICATE OF SERVICE**

I certify that on February 9, 2012, copies “Riverkeeper, Inc.’s Response to Atomic Safety and Licensing Board Request for Information,” was served on the following by NRC’s Electronic Information Exchange:

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***Signed (electronically) by Deborah Brancato***

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Deborah Brancato

February 9, 2012