

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

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In re:

License Renewal Application Submitted by

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

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

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

DPR-26, DPR-64

June 25, 2012

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**RIVERKEEPER, INC. MOTION TO HOLD CONTENTION RK-EC-3/CW-EC-1 IN
ABEYANCE PENDING THE OUTCOME OF SETTLEMENT NEGOTIATIONS**

Petitioner Riverkeeper, Inc. (“Riverkeeper”) respectfully submits this motion requesting that the Board hold Contention RK-EC-3/CW-EC-1 (“Leak Contention”) in abeyance and thereby suspend pending pleading deadlines, including rebuttal testimony due June 29, 2012, pending the outcome of settlement discussions between Riverkeeper and Entergy regarding this contention. Prior to filing this motion, Riverkeeper undertook consultation as required by 10 C.F.R. § 2.323(b) and the Board’s July 1, 2010 Scheduling Order with Entergy and NRC Staff (“Staff”) on Friday, June 22 via electronic mail. Following these discussions, and despite our efforts to come to agreement, both Entergy and Staff indicated they would oppose the motion. Both parties expressed concern that holding this contention in abeyance could cause it to be taken off of the Track 1 hearing schedule for October 2012.

APPROPRIATE CAUSE SUPPORTS THE REQUEST FOR ABEYANCE

Movant submits that appropriate cause supports this request.

First, Riverkeeper has engaged for over a month in good faith efforts to initiate settlement discussions, and move them forward in a timely manner, cognizant of the June 29

deadline for filing rebuttal testimony and subsequent pre-hearing pleadings between now and October 15, when the adjudicatory hearing in this proceeding is slated to begin. Concurrent with commencing preliminary discussions with Hudson River Sloop Clearwater (“Clearwater”), Riverkeeper’s co-petitioner on this contention, Riverkeeper contacted Entergy counsel in early May and enquired whether Entergy would be open to discussing a possible settlement of the contention. Following Entergy’s initial agreement in mid – May to discuss settlement, Riverkeeper and Clearwater worked together to craft a preliminary settlement proposal to submit to Entergy, and scheduled a call with Entergy for May 31 to present Petitioners’ proposal. Riverkeeper and Clearwater presented the proposal to Entergy on May 31. Entergy provided its initial response to the proposal to Riverkeeper and Clearwater on June 12.

Following the clarification of one aspect of Entergy’s response on June 15, Entergy notified Riverkeeper on June 22 of its intention to develop a more detailed response to Riverkeeper’s proposal by sometime during the week of June 25. Given the proximity of the June 29 deadline for rebuttal testimony, Riverkeeper then requested consultation with Entergy and Staff on June 22.

During this same time period, Riverkeeper continued work on rebuttal testimony for other Riverkeeper contentions, but focused its efforts related to the Leak Contention on preparing for and engaging in preliminary settlement discussions with Entergy. Given the limited availability of Arnie Gundersen, Riverkeeper’s expert witness, from early-May to mid June, (which Riverkeeper communicated to Entergy and NRC Staff counsel during consultations regarding intervenors’ joint motion for more time to file rebuttal submissions in the proceeding) Riverkeeper made every effort to use the limited time effectively. As the Board is aware, Riverkeeper is a public interest organization with limited staff and financial

resources. Preparing and filing testimony is a complex and time-intensive effort that requires a significant commitment of legal staff time and expert witness preparation. It would be difficult, if not impossible, to devote adequate resources to both substantive settlement discussions and the preparation of rebuttal testimony on the same contention simultaneously, therefore Riverkeeper focused on what we believe could be beneficial discussions with Entergy.

Riverkeeper is also confident that the Board looks favorably upon, and encourages adversarial parties to seek alternative resolution of issues in dispute in NRC adjudicatory proceedings, to avoid unduly burdening the Board with adjudicating an issue that could potentially be resolved through negotiation. Parties should also be given a reasonable amount of time in which to conduct settlement discussions, without the ongoing burden of preparing for hearing on the same contention under strict time constraints. Hewing to a strict timeline without offering reasonable accommodation for settlement discussions to take place would potentially prejudice Riverkeeper, given the limited resources at its disposal. Riverkeeper respectfully requests that the Board consider how the considerable benefits of allowing time for possible settlement of the Leak Contention might outweigh the potential burden of moving this Contention to Track 2, in the event settlement discussions are unsuccessful and pre-hearing pleadings on the Leak Contention cannot be completed in time to meet the October hearing deadline.

Second, Riverkeeper is not requesting that the Board hold the Leak Contention in abeyance without any time constraints whatsoever. Riverkeeper simply requests that the Board hold the contention in abeyance pending the outcome of settlement discussions which have just begun. Riverkeeper would commit to providing the Board and parties with an update on the status of negotiations on July 25, 2012, approximately four weeks from today. In that update,

Riverkeeper would update the Board on the negotiations. If negotiations are proceeding in a positive direction, Riverkeeper, in consultation with Entergy, will advise the Board as to how much additional time may be necessary to resolve any remaining differences and prepare a draft settlement proposal. If by that time negotiations have proved unsuccessful, or earlier if matters dictate, Riverkeeper would notify the Board accordingly and commit to filing the required pleadings for the Leak Contention as promptly as possible. Riverkeeper believes this is a reasonable proposal that will provide the Board with information on the status of the Leak Contention in a timely manner, and allow Riverkeeper and Entergy the time to focus on productive settlement negotiations.

CONCLUSION

For the reasons stated above, Petitioner Riverkeeper respectfully requests that the Board hold the Leak Contention in abeyance, pending the outcome of settlement negotiations between Riverkeeper and Entergy.

Respectfully submitted,

Signed (electronically) by Phillip Musegaas

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CERTIFICATION
10 C.F.R. §2.323(b) Certification

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 Scheduling Order, I certify that I have 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 I certify that despite my good faith efforts, Entergy and NRC Staff oppose this motion.

Signed (electronically) by Phillip Musegaas

Phillip Musegaas, Esq.
Hudson River Program Director
Riverkeeper, Inc.