

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

April 15, 2016

MEMORANDUM AND ORDER

(Denying Riverkeeper's Request for Admission of a New Contention)

I. Background

On March 8, 2016, Riverkeeper moved for the admission of a new environmental contention, RK-EC-11.¹ In its motion, Riverkeeper stated that it “seeks admission of a single ‘place-holder’ contention challenging the Nuclear Regulatory Commission’s (‘NRC’s’) reliance, in proposing to re-license Indian Point Units 2 and 3, on the Continued Storage of Spent Nuclear Fuel Rule . . . and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel” (Continued Storage Rule and GEIS).² Riverkeeper specified that “while [it] seeks admission of its contention, it does not seek to litigate the substantive content of the contention in an adjudicatory hearing,” as it has “already raised its concerns” about the regulation at issue in comments on draft versions of those documents, which the NRC “has

¹ Riverkeeper's Request for Admission of New Environmental Contention (Mar. 8, 2016) [hereinafter Riverkeeper Motion].

² Id. at 1.

already rejected or disregarded.”³ The Continued Storage Rule and GEIS are currently on appeal to the U.S Court of Appeals for the District of Columbia Circuit.⁴

The NRC Staff and Entergy Nuclear Operations, Inc. (Entergy) both oppose Riverkeeper’s request,⁵ arguing that the new contention is outside the scope of this individual licensing proceeding because it challenges an agency regulation and is therefore inadmissible.⁶ The Staff and Entergy both also contend that the motion is untimely.⁷ The NRC Staff further challenge the motion as failing to raise a genuine dispute of a material issue of fact or law.⁸

II. Board Ruling

The Board views RK-EC-11 as an attack on the agency’s Continued Storage Rule⁹ and GEIS.¹⁰ The Commission has previously denied as inadmissible substantially similar challenges

³ Id.

⁴ Id. at 2 (citing Beyond Nuclear v. NRC, Docket No. 14-1216 (filed Oct. 29, 2014)). This case was consolidated with several similar appeals and is now captioned New York et al. v. NRC, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed Oct. 31, 2014). Riverkeeper Motion at 2, note 1. The case has been argued and the parties await a decision. Id. at 5.

⁵ See NRC Staff’s Answer to Riverkeeper’s Request for Admission of New Environmental Contention (Contention RK-EC-11) (Apr. 4, 2016) [hereinafter NRC Answer]; Entergy’s Opposition to Riverkeeper’s Proposed “Placeholder” Contention RK-EC-11 Concerning the Continued Storage Rule (Apr. 4, 2016) [hereinafter Entergy Answer].

⁶ NRC Answer at 15; Entergy Answer at 6–7 (citing Union Elec. Co. (Callaway Nuclear Power Plant, Unit 1) CLI-15-11, 81 NRC 546, 549 (2015)). See also 10 C.F.R. § 2.309(f)(1)(iii) (providing that an admissible contention must “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding”).

⁷ NRC Answer at 19; Entergy Answer at 9. In its motion, Riverkeeper argued that the filing was timely because its admissibility “depends entirely on an event that will occur in the future,” namely the ruling on the appeal before the DC Circuit. Riverkeeper Motion at 8.

⁸ See Staff Answer at 18–19.

⁹ See 79 Fed. Reg. 56,238 (Sept. 19, 2014).

¹⁰ See Waste Confidence Directorate, Office of Nuclear Material Safety and Safeguards, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel,

in numerous separate operating license proceedings for this same reason.¹¹ Accordingly, we find that pursuant to 10 C.F.R. § 2.309(f)(1)(iii), Riverkeeper's proposed contention, a direct challenge to an NRC regulation, is outside the scope of this individual license renewal proceeding for Indian Point Units 2 and 3 and is therefore inadmissible. The motion is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 15, 2016

NUREG-2157 (Sept. 2014) (Vol. 1, ADAMS Accession No. 14196A105) (Vol. 2, ADAMS Accession No. ML14196A107).

¹¹ See Callaway, CLI-15-11, 81 NRC at 549 (2015); DTE Elec. Co. (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC 551, 553–54 (2015); Duke Energy Carolinas, LLC (William States Lee III Nuclear Station, Units 1 and 2), CLI-15-15, 81 NRC 803, 804 (2015)).

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NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Denying Riverkeeper's Request for Admission of a New Contention)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-7H4M
Washington, DC 20555-0001
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

Lawrence G. McDade, Chair
Administrative Judge
lawrence.mcdade@nrc.gov

Richard E. Wardwell
Administrative Judge
richard.wardwell@nrc.gov

Michael F. Kennedy
Administrative Judge
michael.kennedy@nrc.gov

Alana Wase, Law Clerk
alana.wase@nrc.gov

Julie Reynolds-Engel, Law Clerk
Julie.Reynolds-Engel@nrc.gov

Catherine L. Scott, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Sherwin E. Turk, Esq.
Brian Harris, Esq.
Anita Ghosh, Esq.
Christina England, Esq.
Catherine E. Kanatas, Esq.
Joseph Lindell, Esq.
John Tibbetts, Paralegal
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
catherine.scott@nrc.gov;
beth.mizuno@nrc.gov; sherwin.turk@nrc.gov;
brian.harris@nrc.gov;
david.roth@nrc.gov;
anita.ghosh@nrc.gov;
christina.england@nrc.gov;
catherine.kanatas@nrc.gov;
joseph.lindell@nrc.gov;
john.tibbetts@nrc.gov

OGC Mail Center
OGCMailCenter@nrc.gov

William B. Glew, Jr.
Organization: Entergy
440 Hamilton Avenue, White Plains, NY 10601
wglew@entergy.com

MEMORANDUM AND ORDER (Denying Riverkeeper's Request for Admission of a New Contention)

Elise N. Zoli, Esq.
Goodwin Procter, LLP
Exchange Place, 53 State Street
Boston, MA 02109
ezoli@goodwinprocter.com

Daniel Riesel, Esq.
Victoria Shiah Treanor, Esq.
Adam Stolorow, Esq.
Natoya Duncan, Paralegal
Counsel for Town of Cortlandt
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
driesel@sprlaw.com; vtreanor@sprlaw.com
astolorow@sprlaw.com; nduncan@sprlaw.com

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Brooke McGlinn, Esq.
Grant Eskelsen, Esq.
Ryan Lighty, Esq.
Lesa G. Williams-Richardson, Legal Secretary
Doris Calhoun, Legal Secretary
Mary Freeze, Legal Secretary
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
ksutton@morganlewis.com
martin.oneill@morganlewis.com
bmcglinn@morganlewis.com
grant.eskelsen@morganlewis.com
righy@morganlewis.com
lrichardson@morganlewis.com
dcalhoun@morganlewis.com
mfreeze@morganlewis.com

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan,
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
mjr1@westchestergov.com

Matthew W. Swinehart, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
mswinehart@cov.com

Manna Jo Greene, Environmental Director
Steven C. Filler
Peter A. Gross
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
mannajo@clearwater.org;
stephenfiller@gmail.com;
peter@clearwater.org

Andrew Reid, Esq.
Organization: Hudson River Sloop
Clearwater, Inc.
Ved Nanda Center for International and
Comparative Law
1075 Waite Drive
Boulder, CO 80303
lawyerreid@gmail.com

Richard Webster, Esq.
Public Justice, P.C.
For Hudson River Sloop Clearwater, Inc.
1825 K Street, NW, Suite 200
Washington, D.C. 20006
rwebster@publicjustice.net

Michael J. Delaney, Esq.
Director, Energy Regulatory Affairs
NYC Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373
mdelaney@dep.nyc.gov

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120

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Hartford, CT 06141-0120

robert.snook@po.state.ct.us

David A. Repka, Esq.
Victoria Hsia, Esq.
Carlos L. Sisco, Paralegal
Winston & Strawn
1701 K Street NW
Washington, DC 20006
drepka@winston.com
vhsia@winston.com
CSisco@winston.com

Paul Gallay, Esq.
Deborah Brown
Ramona Cearley, Secretary
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
pgallay@riverkeeper.org
dbrown@riverkeeper.org
rcearley@riverkeeper.org

John J. Sipos, Esq.
Lisa S. Kwong, Esq.
Brian Lusignan, Esq.
Mihir Desai, Esq.
Assistant Attorneys General
Teresa Manzi, Legal Assistant
Siobhan Blank, Legal Assistant
Office of the Attorney General
of the State of New York
The Capitol, State Street
Albany, New York 12224
john.sipos@ag.ny.gov
lisa.kwong@ag.ny.gov
brian.lusignan@ag.ny.gov
mihir.desai@ag.ny.gov
teresa.manzi@ag.ny.gov
siobhan.blank@ag.ny.gov

Kathryn M. DeLuca, Esq.
Laura Heslin, Esq.
Assistant Attorneys General
Office of the Attorney General
of the State of New York
120 Broadway, 26th Floor
New York, New York 10271
kathryn.deluca@ag.ny.gov
laura.heslin@ag.ny.gov

Sean Murray, Mayor
Kevin Hay, Village Administrator
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
smurray@villageofbuchanan.com
administrator@villageofbuchanan.com

[Original signed by R. Giitter _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 15th day of April, 2016